

EXHIBIT A

1 Q. Good morning, Mr. John. A lot has been written about your
2 background.

3 Can you tell us in your own words your background and how
4 you developed your reputation?

5 A. Yeah. I grew up in a very poor neighborhood and I created
6 a company, a clothing company, at the age of 19 years old. As
7 far as bias and inclusive of a culture. I failed that company
8 several times until the age of 28 years old, then I was able to
9 employ thousands of people over that period of time, do
10 thousands of deals globally.

11 I then started to invest in other people's dreams prior to
12 getting on the show called Shark Tank. I would publish to
13 today, my last book, six books, talking about empowering other
14 people, the power of broke, how people can maximize their time
15 and life. And my recent one is about empowering young kids and
16 families on how to have financial intelligence so that they
17 have a better chance at success.

18 I got casted onto a show called Shark Tank in 2007 when
19 nobody could find any money from the banks to help other
20 entrepreneurs invest in their dreams. And that's how I'm here,
21 by usually being on a lot of the networks, talking about
22 entrepreneurship, empowering people. And I recently have
23 something called Black Entrepreneurs Day where this year we
24 will invest up to \$1 million -- not invest, sorry. Give, grant
25 \$1 million to small businesses.

1 Q. Mr. John, how do you use your reputation in the
2 marketplace?

3 A. My reputation is about trust. My reputation is about
4 anybody can make it. I am the only African American on major
5 network for the last 15 years that didn't come from music,
6 sports, or politics. I am -- I am the example of the American
7 dream.

8 I speak for everybody from -- during the pandemic, I went
9 to speak for President Bush at his library, I speak for
10 President Obama, I speak regularly about entrepreneurship.
11 I do represent AARP, Chase, and various other brands and
12 public companies about trust and how people can invest in
13 themselves, as well as in brands to help build their network
14 and educate --

15 (Court reporter interruption.)

16 THE WITNESS: I said something about building network
17 -- or their education or empower themselves.

18 BY MS. COLWIN:

19 Q. You had mentioned just moments ago that you -- what
20 opportunities are provided to -- withdrawn.

21 You mentioned moments ago in your testimony that you
22 started with Shark Tank. In any of the businesses that you've
23 invested in, have you ever been involved in the day-to-day
24 operations of those businesses?

25 And I'm talking strictly about the business that you

1 invested on Shark Tank?

2 A. No, I'm not.

3 Q. And with respect to the businesses that you invest in as a
4 result of Shark Tank, what types of opportunities do you give
5 to those businesses?

6 A. I give them public access; I help them on social media; I
7 broker deals with other companies that can give them
8 distribution, you know, shelf space, financing; I advise them,
9 I talk to retailers.

10 Whatever way that I can get them to not have to pay
11 everyday, you know, people and/or services and get their brand
12 out there and put a bullhorn on themselves or their brand to
13 extend it to all the customers out there.

14 Q. In order to do what you do for these businesses on Shark
15 Tank, your reputation and your brand, what is essential to
16 them?

17 A. It's trust.

18 Q. An essential --

19 A. Nobody will trust anybody.

20 I am sorry. You broke up.

21 Q. No, you said -- you answered my question, Mr. John.

22 The essential traits that's needed for you to help these
23 businesses, what is that?

24 A. Yeah, trust. Nobody would want to work with anybody who
25 is a thief or, you know, a bad person.

1 Baker?

2 A. I do.

3 Q. And Brittani Baker and Al Baker came to make their
4 presentation as Bubba's Q boneless ribs on Shark Tank; is that
5 right?

6 A. Correct.

7 Q. And aside from the financial investment you made in
8 the Bakers' business, give us examples of what you did for
9 them?

10 A. I went around to several businesses; I have waived any of
11 my speaking and public appearance fees to speak for people,
12 like Carl's Jr. for them, and Hardee's; I went and did a tour
13 to go around to all of those businesses; I attended trade
14 shows; I funded some trips and various other things of that
15 nature; put them on my social media; I've done interviews with
16 them, as well as put them in one of my books because I believed
17 in the product and in the brand.

18 I did as much as I could. I assigned my team to help with
19 all of the social media and various other things and
20 connections and making calls on their behalf.

21 Q. You said when you assigned this to a team member,
22 was that team member who was your project member, Larry
23 Fox?

24 A. That is correct.

25 Q. And Larry Fox is a minority member of DF Ventures; is that

1 right?

2 A. That is correct.

3 Q. And you mentioned just moments ago, Mr. John, that you
4 waived your speaking engagement fees; is that right?

5 A. That is correct.

6 Q. How much, the range of what you're paid for for speaking
7 engagements, what is that?

8 A. 75 to \$100,000, but it can go up to about 150. But the
9 daily also of what we would call activations, the day to show
10 up to various places and be the face of things, can range for
11 about 250,000 a day.

12 Q. Do you know the Rastellis, Mr. John?

13 A. Yes, I do.

14 Q. Do you know -- how do you know them?

15 A. Al Bubba Baker introduced me to them.

16 Q. Now, does there come a time that there's a
17 partnership between DF Ventures, the Bakers, and the
18 Rastellis?

19 A. Yes.

20 Q. And there was a partnership that was created, was called
21 FOFBakers, LLC; is that correct?

22 A. Yes.

23 Q. And as part of the creation of FOFBakers, LLC, an
24 operating agreement was created amongst the three of you,
25 correct?

1 Is that right, an operating agreement --

2 A. Yes. An operating agreement was created, yes.

3 MS. COLWIN: And, Your Honor, with your permission,
4 I'd just like to publish for identification DJ-1.

5 THE WITNESS: You're frozen.

6 MS. COLWIN: I'm frozen?

7 THE WITNESS: Now I can hear you.

8 MS. COLWIN: I just ask Your Honor --

9 THE COURT: What is the document?

10 MS. COLWIN: The document is the operating agreement,
11 Your Honor.

12 I wanted to --

13 THE COURT: Any objection?

14 Yeah, it's going to be admitted into evidence.

15 Nobody has any objection, correct?

16 MR. DAHAN: No objection, Your Honor.

17 MR. BAKER: No objection, Your Honor.

18 THE COURT: Okay. It's admitted into evidence.

19 (EXHIBIT DJ-1 WAS RECEIVED IN EVIDENCE.)

20 MS. COLWIN: Thank you, Your Honor.

21 BY MS. COLWIN:

22 Q. Pursuant to the agreement, what is your position of
23 FOFBakers, LLC?

24 A. I'm a minority shareholder.

25 Q. Are you a managing member?

1 A. I am a -- I am not. I am a spokesperson, for the most
2 part.

3 Q. Now, your role at FOFBakers is identified in the operating
4 agreement; is it not?

5 A. Yes.

6 Q. And according to the operating agreement, what was your
7 role at FOFBakers in your terms?

8 A. To expand their brand social media wise, make connections
9 for their brand, and be the face of the brand to extend the
10 brand out to the market.

11 Q. Now, there's also confidentiality provision in this
12 operating agreement; is that right?

13 A. Yes.

14 Q. And in your experience as an entrepreneur, how important
15 are these confidentiality provisions?

16 A. Extremely important.

17 Q. Why do you say that, Mr. John?

18 A. The confidentiality agreement allows us to operate as
19 partners and not give away trade secrets and various other
20 information to give other competitors the edge and/or to speak
21 negatively necessarily about each other, damaging the entire
22 business and whatever investments are being held in the
23 business, also damaging the brand of the business and/or each
24 individual.

25 MS. BRITTANI BAKER: The brand of our business.

1 A. It could hurt anybody's brand, especially if they're being
2 edited and words are being extracted and/or just projected out
3 there; it could hurt the trust of the brand or the trust of
4 myself; and it can also give competent -- or confidentiality
5 about the process or the strategies of the brand. It's like
6 giving another team your playbook.

7 Q. To your knowledge, who has the financial control of
8 FOFBakers, LLC?

9 A. The managing director, which could be the Bakers and the
10 Rastellis.

11 Q. Are you involved in any of the day-to-day operations on
12 the accounting side of FOFBakers?

13 A. No, I'm not.

14 Q. Are you a signatory in any of the business accounts for
15 FOFBakers?

16 A. No, I'm not.

17 Q. Are you able to move any of the finances for FOFBakers,
18 LLC?

19 A. No, I'm not.

20 Q. You've written several business books and you mentioned
21 that in the earlier testimony that you gave.

22 These books -- one of these books, Rise And Grind, you
23 mention the Bakers; is that right?

24 A. Correct. I dedicated a chapter to them.

25 Q. Why did you include them in your book?

1 A. I believe in the Bakers and I believe in the product and I
2 wanted to utilize my platform to get their story out, as well
3 as about them, into millions of hands and in an inspirational
4 form where people would not only believe in the product, but
5 believe in the people behind it.

6 Q. Did you have influence -- withdraw.

7 What, if any, influence did you have in including the
8 Bakers in the Beyond the Tank and the Shark Tank
9 updates?

10 A. All the influence. I have about 40 investments at the
11 time on the Shark Tank. And to give that platform of
12 millions and millions of viewers to see the story of the Bakers
13 and their story and getting them to be able to get to a
14 company to a level that they had failed prior to, now have
15 success and have product out there in the market and a
16 capable way of getting out to the market is an ongoing
17 commercial.

18 It's something that runs on CNBC -- Shark Tank runs on
19 CNBC 40 times a week and it's viewed by CEOs and various other
20 people. So it's an ongoing commercial.

21 Q. Did there come a time that you were made aware that the
22 managing members of FOFBakers, LLC, the Rastellis, and the
23 Bakers were in a business dispute?

24 A. Yes.

25 Q. And to your understanding, there was a resolution that

1 materialized in the settlement agreement; is that right?

2 A. Yes.

3 Q. And in the settlement agreement, there's a non --

4 MS. COLWIN: And, Your Honor, I just would like to
5 note for the record -- and I'm assuming there's going to be no
6 objection to the admission -- DJ-2 is the settlement agreement
7 pertaining to FOFBakers.

8 THE COURT: Any objection?

9 MR. DAHAN: No objection, Your Honor.

10 MR. BAKER: No objection, Your Honor.

11 THE COURT: All right. It's admitted into evidence.

12 (EXHIBIT DJ-2 WAS RECEIVED IN EVIDENCE.)

13 MS. COLWIN: Thank you, Your Honor.

14 BY MS. COLWIN:

15 Q. In the settlement agreement, Mr. John, there is a
16 non-disparagement obligation between the Bakers, the Rastellis,
17 and DF Ventures.

18 You're aware of that; is that right?

19 A. I am, yes.

20 Q. What is the importance of that non-disparagement
21 provision?

22 A. Well, it's to make sure that you do not talk about the
23 partners and/or the brand in any forum so that it doesn't hurt
24 any of the individuals out in the market and/or hurt the brand
25 so that buyers would feel comfortable buying the brand from

1 the store perspective, as well as the end customer, and that
2 they would feel that the operators of the business are
3 trustworthy.

4 Q. Are you aware of any social media posts that have been
5 made regarding Bubba's Q to the present day?

6 A. I am, yes.

7 MS. COLWIN: And, Your Honor, we also in our
8 introductory remarks, the Court has permitted this, so there's
9 no objection, to show -- I'm going to show just the video clip.
10 It's going to be marked as DJ-3 to DJ-10.

11 I'd ask, with the permission of the Court, that these
12 be admitted into evidence.

13 And what I'd like to do is after they're published,
14 pursuant to your ruling, Your Honor, I'm going to ask Mr. John
15 just for a reaction and a response to those videos.

16 THE COURT: All right. They will be admitted into
17 evidence, DJ-3 through and including DJ-10, and you may show
18 them.

19 MS. COLWIN: Thank you, Your Honor.

20 (EXHIBITS DJ-3 THROUGH DJ-10 WERE RECEIVED IN
21 EVIDENCE.)

22 (Exhibits played)

23 BY MS. COLWIN:

24 Q. Mr. John, I've just played for you what's in evidence as
25 DJ-3 through DJ-10, and these were posts.

1 That is Brittani Baker that was in those posts, correct?

2 A. Right.

3 Q. And in your experience, do you know how many people have
4 viewed those posts, to your knowledge?

5 A. I'm told a couple of million.

6 Q. And in your experience of social media, what happens when
7 a post has this many views?

8 A. That post can be monetized and will be monetized from a
9 social media aspect. It's the same as any form of a network.
10 If you have millions of views, then you could get paid
11 somewhere around five to maybe even \$0.10 per view.

12 And commercials will run on there. You do not have to
13 seek out the advertisers. It's purely like a television
14 station.

15 And of course, those things go viral and they're shared
16 with people, and from that aspect of it, you know, it can be
17 very, very damaging or it can be rewarding, depending on what
18 side of the party it is. Because most of the decision-makers
19 in businesses in this country probably are not on social media
20 in the 40's, 50's, 60's, 70's, and 80's, and what happens is
21 they listen to the younger community, whether it is their
22 grandchildren or children or secretaries or various other
23 people on social media that influences them.

24 So if they don't have any data or stats besides those
25 words, then if we're looking for business and they say, mommy,

1 daddy, grandma, grandpa, Daymond is a thief or Daymond is this
2 and that because this is what I heard, that has a lot of
3 weight.

4 So they could be monetized directly, they could make money
5 directly from the amount of number of views, and it also can be
6 extremely damaging to the party if they are making false
7 statements.

8 Q. Mr. John, I'm going to then now, pursuant to the Court's
9 permission, put on --

10 MS. COLWIN: Actually submit into evidence for the
11 Court's ruling for evidence DJ-11 to DJ-19.

12 Your Honor, as you know, these are ones that
13 there have been no objection to, we'd like admitted into
14 evidence.

15 THE COURT: They will be admitted into evidence, DJ-11
16 through and including DJ-19.

17 MS. COLWIN: Thank you, Your Honor.

18 (EXHIBITS DJ-11 THROUGH DJ-19 WERE RECEIVED IN
19 EVIDENCE.)

20 BY MS. COLWIN:

21 Q. Mr. John, I'm going to ask you about some of the evidence
22 that Your Honor has admitted. Starting with DJ-11, I'm going
23 to read you the comments.

24 DJ-11 starts: "I used to like Shark Tank, but now I hate
25 their guts, especially Daymond John. Scam artists who don't

1 help you but drain you financially. Facts."

2 "Daymond John, Shark Tank, unacceptable. Get them their
3 money back."

4 Now, there's -- in front of "Shark Tank," do you see that?
5 That's also asking Shark Tank to look at -- to look at this
6 comment; is that right?

7 A. Yes.

8 Q. There's so much --

9 (Court reporter interruption)

10 MS. COLWIN: "There's so much predatory behavior" is
11 another comment.

12 "Crook" is another comment.

13 BY MS. COLWIN:

14 Q. Mr. John, DJ-12, and I'll ask you some final questions at
15 the end.

16 DJ-12: "Keep it coming. Sounds like Daymond should be
17 sued at least and in prison probably. Something he's done must
18 be criminal."

19 "BubbasQFoodTruck," that's the Bakers, correct?

20 MS. BRITTANI BAKER: Correct.

21 MR. BAKER: Correct.

22 BY MS. COLWIN:

23 Q. It says: "Thank you for your support."

24 Do you see that, Mr. John?

25 A. I do.

1 Q. DJ-13. Comments: "Daymond John, crook."

2 Another comment: "I knew he was a crook. I wish they
3 would put him off the show."

4 DJ-14: "Shark Tank" -- again, it's asking Shark Tank --
5 posting Shark Tank. "I'll never watch again. #crook. #scum."

6 What happens when you have a comment that has that in
7 front of it, the "@SharkTank" and then that message?

8 A. Well, potentially it could jeopardize me getting kicked
9 off the show. The show is a family show watched by mainly
10 families. It is an ABC Disney product, the show.

11 Also even on the show, now it will reduce my ability to
12 negotiate effectively against other sharks if I am tagged in a
13 way that I am a criminal.

14 And when people are saying things such as "Put him in
15 prison" publicly, nobody would want to trust and do business
16 with anybody who is being called a crook and/or somebody who
17 should go to prison.

18 Q. DJ-15, comment: "Send your story to every TV
19 station, news reporter, bloggers, meat bloggers, restaurant
20 bloggers. Make it as much noise as possible. @Daymond
21 John."

22 BubbasQfoodtrucks, that's again the Bakers. They're
23 saying: "Thank you."

24 Is that right?

25 A. Right.

1 Q. Next comment: "I lost all response(Sic) for Daymond John.
2 I can't watch Shark Tank anymore."

3 "BubbasQFoodTruck." Again, that's a response by the
4 Bakers with an exclamation point, correct?

5 A. Correct.

6 Q. And behind some of these posts they're referencing the
7 board. This is a board right behind me. Do you see that?

8 Mr. John, can you see this board? In some of those posts,
9 this board is behind the post.

10 Do you see that?

11 A. Yeah. I can see it now, yeah.

12 Q. And it says right here: "Daymond John" --

13 (Court reporter interruption)

14 Q. In the profile of BubbasQfoodtrucks, Mr. John, it says at
15 the very top: "Daymond John and Rastelli Foods are trying to
16 steal my family's business."

17 And then it has a link to a GoFundMe page.

18 And that particular board that we have as a demonstrative,
19 Mr. John, is behind some of that post that we just showed
20 that's in evidence, correct?

21 A. Correct.

22 Q. DJ-16: "Time to blow up Twitter and include Shark Tank
23 as well. No one wants bad publicity that's bad for their
24 brand."

25 And "BubbasQFoodTruck," we already heard from the Bakers,

1 they acknowledge it's them. There's several exclamation points
2 there.

3 "This seems like a case of fraud, breach of contract, and
4 infringement and contributory and patent infringement and sue
5 those personally responsible."

6 "BubbasQfoodtrucks," again with multiple exclamation
7 points after that.

8 DJ-17. Comment: "Damn, I always looked up to Daymond
9 John and always thought he was a standup guy and came from the
10 bottom. 18 million is insane to only get 685,000."

11 Comment: "I wonder how many other people he has done this
12 to."

13 Comment: "Daymond John, opens his comments again. Keep
14 slamming him."

15 And last one: "Hooray. Keep Daymond John losing
16 speaking engagements. I hope this cancels his useless ass
17 forever."

18 Last, DJ-18. Comment: "Now we can see how Daymond is now
19 a billionaire, stealing."

20 Comment: "They really should have kicked Daymond John off
21 the show."

22 Comment: "I learned a lesson, don't deal with dirt bags."

23 DJ-19. Comment: "I definitely unfollowed him and will
24 never support a business venture he's attached to again."

25 "BubbasQfoodtrucks," we already know on the record that's

1 the Bakers: "Thank you."

2 Comment: "I hope no one does business with him again."

3 "BubbasQfoodtrucks," again the Bakers, multiple
4 exclamation points.

5 Mr. John, I have stated on the record the comments that
6 are attached to these posts. How have you suffered harm as a
7 result of defendants' statements and the comments that I just
8 read online?

9 A. How have I?

10 Q. Yes.

11 A. Well, immediately during the week that these comments were
12 going out, I had a TV show that was being greenlit from a major
13 network that was cancelled. The show itself was cancelled. I
14 had lost speaking engagement, as well as a major brand that I
15 was doing an activation for said that they would want to stop
16 all discussions as this stuff was going out.

17 But I have no other idea on how this stuff will affect me
18 for the future. As I said, I have and I always -- I've spoken
19 for -- I represented several of the Presidents of this United
20 States and a lot of large brands. And this stuff going out, if
21 it's hit millions of people, imagine if 2 million people each
22 told ten people, I have no idea how this would affect myself,
23 earnings, and my family for the future, my reputation to walk
24 into public companies as well as governments and various other
25 things to represent them as an honest person who will deliver

1 on my word and any of the type of good, inspirational things
2 that I try to put out so that people can inspire themselves and
3 empower their families.

4 Q. You're filming Shark Tank this week; is that right?

5 A. That is correct.

6 Q. What do you believe might happen as a result of these
7 disparaging and negative comments about you that call you
8 thief, crook, that --

9 A. Well, I believe that any offer that I give will -- some of
10 it will have to have second thoughts because fresh on their
11 minds is somebody who they are saying is a thief, who tries to
12 take their patents and their family business and their company,
13 and I wouldn't want to trust anybody either if that's what I
14 believe.

15 You know, it's takes me over 30 years to build this
16 reputation, it takes just one person to just go out there and
17 not care at all and break contracts and just go out and talk as
18 bad as they want about me with no factual evidence to give to
19 courts and break other agreements and just try to break me
20 down.

21 Q. How many years have you worked at building your reputation
22 and brand?

23 A. About 35 years I've been doing this. And on -- you know,
24 from a business level, hundreds of investments in companies.
25 And I paid, you know, thousands of people and have worked

1 globally around the globe creating a brand of honesty and trust
2 and empowerment.

3 Q. What does your reputation mean to you, Mr. John?

4 A. My reputation means everything. I've probably stated many
5 times I will never leave my kids inherency, I will only leave
6 them a legacy. I am what they call the American dream. When
7 someone watches me on TV, on Shark Tank, no matter what
8 color or gender they are, they know that because I don't
9 have a high education or wasn't able to play sports or act or
10 sing, that my ability to be an honest, fair person and
11 hardworking people that will wake up before everybody and
12 go to sleep after everybody is what any and every family can
13 do.

14 Shark Tank is the top show watched on network, targeted
15 towards adults that will watch, families, kids 5 to 15 and
16 parents and kids together. It's very influential for families.
17 And that is my brand, to leave a legacy out there of honesty,
18 trust, and empowerment.

19 Q. Is there any money in the world that can get you to get
20 back your reputation once it's taken?

21 A. There is no money in the world that can take 35 years of
22 coming from lower, very hard circumstances to get to this point
23 and not to have any of these type of challenges my entire life.
24 I don't know if I will be on this planet another 35 years and
25 this is all that I will have.

1 so I do not have any questions.

2 THE COURT: Thank you. All right. Ms. Brittani
3 Baker, you may ask questions.

4 MS. BRITTANI BAKER: Thank you.

5 C R O S S - E X A M I N A T I O N

6 BY MS. BRITTANY BAKER:

7 Q. Since Daymond John says he's our brand ambassador,
8 I was just wondering, I was going to ask him the same thing,
9 when was the last time he's done anything to promote our
10 brand?

11 A. I have no idea. I've talked about you in the press in a
12 positive manner over the last -- probably all the way up to
13 maybe even a year ago because people ask me on stage and on
14 public what are the brands that you love the most, and you are
15 included in those brands.

16 It's unfortunate that because of your negative posts prior
17 to that about Walmart and various other things that -- and
18 Al Bubba Baker asking me never to contact any of you from
19 your or your family, how can I make any other positive
20 posts about that or posts at all if you are asking me not to do
21 that?

22 Q. So then why do you stay involved with a company if he
23 asked you not to talk to us?

24 Why wouldn't you --

25 A. I have millions of dollars of my intellectual property and

1 my energy put into this brand.

2 Am I supposed to stay out of the brand totally if you guys
3 have said as operating managers to not contact anybody in your
4 organization?

5 Q. Millions of dollars? We've seen no type of accounting.
6 You guys didn't talk about any number at any time.

7 A. I have millions of dollars worth of my intellectual
8 property in the brand. If you would have had a spokesperson to
9 do the things that I did, it would have cost you about 3 or
10 \$4 million, so --

11 Q. My question is, I don't understand why you would stay
12 involved --

13 MS. COLWIN: Your Honor, she's cutting off the
14 witness. She's being argumentative.

15 I understand she's pro se, but this is truly
16 inappropriate.

17 THE COURT: Ms. Baker, you need to let him answer the
18 question and finish his answer. You can't argue with him.
19 Just please ask questions.

20 MS. BRITTANI BAKER: Yes, Your Honor.

21 THE WITNESS: We've come to a settlement
22 and an agreement, right, and the product is still -- all of
23 the investment has already been in the product already
24 prior to that, of all the trade shows and walking around and
25 the book and the update on the tank and waiving fees and

1 the brand due to advertising and marketing. That is the
2 strategy.

3 Q. I just have two more questions.

4 So your job responsibilities as a brand ambassador have
5 stopped?

6 A. My intellectual property of what you have of me being on
7 television and in books will never stop because that is already
8 content that you put out the same way that you are putting out
9 the other content you're doing right now. It will never go
10 away. I did not give you any kind of limitations or the
11 company any kind of limitations.

12 Normally my brand feels that millions of dollars, somebody
13 has a lot of limitations. They can only use it for a year;
14 they can only use it on certain type of channels. You have no
15 restrictions from that. That is an ability to use my
16 intellectual property for the rest of the existence of the
17 company.

18 Q. So we don't get any new promotions, we just use your
19 intellectual properties from the past?

20 A. Did the managing --

21 MS. COLWIN: Objection, Your Honor.

22 THE WITNESS: Did the managing partners at all contact
23 me with any kind of strategic idea or concept or photo shoot or
24 scheduling anything to use my intellectual property or did you
25 take any or -- or any of the managing partners take any kind of

1 THE WITNESS: You didn't have a request for --

2 THE COURT: Hold on, Mr. John. Hold on.

3 What's the objection?

4 MS. COLWIN: Your Honor, she asked the same question
5 now twice. This is the same question.

6 He already responded. It's the same question she just
7 posed.

8 THE COURT: Well, I'm hoping for a similar
9 response than the one that we got. I'm not suggesting it was a
10 bad response, I just would like a simpler response to the
11 question.

12 Anything further?

13 THE WITNESS: I had mentioned many times in
14 publications, and I did not get at all any formal request from
15 anybody from management to do any further photo shoots,
16 interviews, anything else.

17 No formal requests. No requests at all, formal or
18 informal, have been made for me to do any further part of my
19 job or obligation.

20 BY MS. BRITTANI BAKER:

21 Q. How can we make a request if you don't talk to us?

22 A. Your managing partners can shoot me an email. And you are
23 managing partners with the Rastellis, and you can send an email
24 and that request would be honored.

25 Q. When I called you, did you say, "My life is easier without

1 THE WITNESS: One year at a time.

2 THE COURT: And when does the current one-year
3 expire?

4 THE WITNESS: After this season.

5 THE COURT: Okay. So you have no commitment for
6 future seasons; is that correct? You personally?

7 THE WITNESS: That is correct. That is correct.

8 THE COURT: Has anyone told you from Sony or ABC or
9 CNBC that they don't want you to do it anymore because of these
10 postings?

11 THE WITNESS: They've had concerns about it. If you
12 look at various other sharks, primarily -- well, there was a
13 shark on season number 1 or 2 named Kevin Harrington, they did
14 not resign his contract.

15 You know, it is a Disney format. It is a family show.
16 They don't have to give you any reason to renew or not to renew
17 your contract. They will just not renew it.

18 THE COURT: To your knowledge, have any of the other
19 sharks ever been the subject of any controversy on social
20 media?

21 THE WITNESS: Yes, but they've not been the
22 controversy of any form of what the basics of their integrity
23 is theft, so they have been -- one of my sharks have gotten
24 into an accident, others have gotten into marital problems,
25 some have had political debates, but there has never been one,

1 BY MS. PRIMAVERA:

2 Q. Mr. Fox, are you an attorney?

3 A. Yes, I am. I practiced for over 30 years.

4 Q. What is your relationship to DF Ventures?

5 A. I'm a minority member.

6 Q. Who else is a member of DF Ventures?

7 A. Daymond John.

8 Q. And what is Mr. John's role in DF Ventures?

9 A. Daymond is a managing member.

10 Q. How did you come to know the Bakers?

11 A. Over the course of any Shark Tank show or season, I become
12 aware of certain deals that have come across Daymond's table
13 that he is bringing forward, so I probably learned about it
14 early on and then eventually Daymond introduced me to
15 Mr. Baker.

16 Q. Were you acting as a project manager in that role?

17 A. Absolutely.

18 Q. We heard Mr. John's testimony a couple minutes ago about
19 his team's work to help the Bakers' business.

20 Can you detail a little more specifically what you and
21 Daymond were involved with?

22 A. We tried to handle anything and help in any way we
23 possibly could. I mean, from the very beginning we ran into a
24 problem with a co-packer, that the original co-packer that was
25 in place couldn't handle the volume and the capacity. Because

1 you have to understand, when entrepreneurs appear on Shark
2 Tank, there's an immediate demand. So at that point, they
3 believe in the first week, the demand is over \$400,000 in
4 orders and the co-packer wasn't able to handle that
5 capacity.

6 So a lot of the early-stage things that we were involved
7 with were helping Mr. Baker vet co-packers. Mr. Baker had some
8 co-packers that he was interested in. We actually -- I mean, I
9 remember Mr. Baker and myself, we both went down to North
10 Carolina for multiple days to vet one co-packer, and that was a
11 two- to- three-month process; we went to another one that
12 Daymond and I procured on Long Island, which is a two- to-
13 three-month process.

14 Eventually, Daymond introduced us to the largest co-packer
15 and meat company in all of Canada, so the Baker family and I,
16 we all flew up there. We had multiple meetings. And again,
17 it's not just a one-day meeting, you have to go through the
18 whole process of, you know, meeting them, but also yield
19 products being sent back and forth, discussions on pricing. So
20 that was another three to four months.

21 But other things that Daymond did early on and I helped
22 with was -- you know, we had cruise lines that were interested
23 in the product, grocery stores, you know, different companies.
24 And we also organized trade shows to get the product out there.
25 You know, one major trade show in Las Vegas we all attended.

1 Daymond actually got booth space, which is not easy to get
2 booth space short-term, but we had that; shipped the product
3 out there; developed artwork, you know, to associate with the
4 booth; had employees there. Daymond came, he walked the show;
5 the Bakers, we flew them out there.

6 Again, it was anything to do to promote the product and
7 the brand name, the brand image out there. Also it was online
8 business, you have to get Daymond -- we had to get supplies,
9 coolers, dry ice. There's so many different things and so many
10 different hats we were wearing at that time.

11 But like I said, any way to help the brand develop and
12 take steps forward, Daymond and I were there for that.

13 Q. And does that include 2019 to present or were there
14 further actions to promote the brand other than what you just
15 described?

16 A. Certainly. I mean, all across it one of the things that
17 we did was to try to procure sales opportunities or business
18 opportunities that would better the venture.

19 We'd help promote them on online platforms, sales
20 platforms, bring grocery stores to the table, cruise lines,
21 professional sports teams.

22 We'd often participate in group sales' calls where
23 Daymond's team would produce a matrix on a spreadsheet in an
24 Excel file that would list all the potential companies and
25 contacts that we had, along the same with what Mr. Baker had;

1 week when business started after Shark Tank, we had nothing but
2 business failures and delays because there wasn't an adequate
3 co-packer.

4 As I mentioned, it was a very small company that was not
5 used to a demand of, say, \$400,000 at a time; they weren't used
6 to supplying major grocery stores or cruise lines. So as
7 Daymond was bringing certain relationships to the forefront, it
8 was actually a little bit embarrassing because there was no
9 way to move forward because there was no way to supply these
10 types of companies to move forward in some type of joint
11 venture.

12 So that's, again, why over the course of the next year to
13 year and a quarter, you know, the regular conversations between
14 all of us, and particularly between Al and myself, were how do
15 we find a co-packer. And we probably went through 14 to 18
16 different names, took -- you know, narrowed it down eventually
17 to the visits that I discussed earlier.

18 But to try to finally hone in on that to find out how we
19 could find it to the next level because we were kind of
20 hamstrung and stalled at that point.

21 Q. And was there an episode of Beyond the Tank filmed that
22 addressed this issue?

23 A. Absolutely, yes.

24 Q. Okay. Can you discuss what was generally said on the
25 show, to the best of your recollection?

1 A. Absolutely. Just to give a little background, so Shark
2 Tank had a spinoff show that they premiered called "Beyond the
3 Tank," and we were actually fortunate that, when asked, Daymond
4 wanted to feature, you know, the Bakers and their venture
5 together. So we were actually on the first episode. That
6 episode is actually featured in a 20- to- 22-minute segment
7 strictly with Al and Daymond in person.

8 Daymond flew out to Avon, Ohio to meet with the Bakers,
9 and they had detailed, deep discussions about the obstacles
10 that we were confronted with, and the major focus was a
11 co-packer. Daymond made it very clear on the episode on film
12 that, listen, we struggled, I brought all these relationships
13 to the table, it's been embarrassing for me, there's no way to
14 move forward.

15 Mr. Baker took accountability and said, "Listen, the
16 co-packer that we have in place, that's me, that's on me, I
17 take responsibility." And Daymond pretty much gave an
18 ultimatum on the show and said, "I'm willing to cut my losses
19 and walk from this deal unless you're able to bring the
20 co-packer to the forefront immediately so that we could move
21 this business forward."

22 Q. And was a co-packer ultimately secured?

23 A. Yes, it was.

24 Q. And who was that co-packer?

25 A. Al introduced us eventually to the Rastellis.

1 Q. After meeting the Rastellis, what, if anything, did
2 Daymond do to facilitate that relationship?

3 A. Again, I mentioned a little bit earlier, we were involved
4 in many different roles.

5 First of all, Daymond is a brand ambassador, so coming
6 out with branding and marketing strategies. You know,
7 Daymond talked a little bit about putting the Bakers in a
8 chapter of his book; he did numerous magazine articles;
9 television interviews; social media posts; we helped again with
10 regard to sales. I mean, Daymond dedicated several members
11 of his internal team to try to bring sales leads to the
12 forefront and hand them off to the Rastellis and Mr. Baker to
13 kind of add into the system of a potential, you know, vendor of
14 record.

15 So, again, there were monthly sales' calls again with
16 multiple members of Daymond's team that would list and go
17 through every contact that we thought we could bring to the
18 forefront. Status updates. And then with regard to any
19 initiatives that Mr. Baker or the Rastellis were working with,
20 how we could deploy Daymond's resources if there could be help.
21 And those sales' sheets, we actually, to be helpful to the
22 team, would, you know, update those sheets, send them out,
23 have notes on how Daymond and the team could help. You
24 know, and the ones that Al was doing on his own, based upon
25 Al's work on those calls, they would all be updated and

1 circulated for the team so we could all synergize off each
2 other.

3 Daymond was also able to bring sales platforms. As I
4 mentioned early, Zulily and shop.com were two online platforms
5 that we did work with. Daymond, through his connection at ABC
6 TV, there's a show in the morning called Good Morning America
7 where they actually have certain segments where they sell
8 products and introduce the public to the products and they
9 actually have a launch right there that they could log right on
10 and sell, so we were able to do that for the venture and it had
11 a high level of sales when we were able to get it on that
12 platform.

13 But again, we wore many different hats that any way
14 Daymond could use his marketing branding, brand ambassadorship,
15 or we could help out by making a phone call.

16 To give you a corny analogy, our role was to shake hands
17 and kiss babies and make people feel happy about advancing the
18 product, you know, to become a major brand. So anything we
19 could do to help with that branding message or make
20 introductions, we were able to do.

21 Q. Understood. Did there come a time when Daymond, the
22 Rastellis, and the Bakers entered into an agreement?

23 A. Absolutely.

24 MS. PRIMAVERA: Your Honor, can I show the witness
25 what was previously entered into evidence as DJ-1? It's the

1 operating agreement.

2 THE COURT: Of course. Of course.

3 MS. PRIMAVERA: Thank you.

4 BY MS. PRIMAVERA:

5 Q. Mr. Fox, can you take a minute to look at that document.

6 Do you know what this document is?

7 A. Absolutely. This is the company, FOFBakers, LLC, which is
8 our group company. It's the operating agreement for the
9 company.

10 Q. Okay. And are you familiar with the terms of this
11 operating agreement?

12 A. Yes, I am.

13 Q. How are you familiar?

14 A. I mean, from the get-go I was involved in, you know,
15 helping to negotiate and, you know, comments and being involved
16 from the very beginning stage.

17 I mean, this agreement probably was a four- to- five-month
18 process, from what I remember. Each of the three members were
19 all represented by individual counsel, so over a five-month
20 period there were so many iterations and red lines and
21 conference calls that I was intricately involved with with
22 regard to the DSI and its negotiations.

23 Q. Were the Bakers represented by counsel throughout the
24 entirety of the negotiations of this agreement?

25 A. Absolutely. There was a gentleman that was introduced

1 early on, his name was John Patrick, and I believe the name of
2 the firm was the Reminger law firm out of Ohio.

3 And actually, John kicked off the process because he
4 created the entire term sheet as a blueprint for what the
5 operating agreement would be, and he was involved in every step
6 of the negotiation.

7 Q. Up until the agreement was put in final form?

8 A. Yes.

9 Q. Okay. And do you recall when it was put and memorialized
10 in final form?

11 A. November 2015.

12 Q. Is this a document that's kept in the ordinary course of
13 business?

14 A. Yes, it is.

15 Q. Did Daymond ever have direct access to FOFBakers'
16 financial documents, which is the LLC that was created as a
17 result of this operating agreement?

18 A. Absolutely not.

19 Q. Did you?

20 A. Absolutely not.

21 Q. All right. Pursuant to this operating agreement you're
22 looking at now, who was responsible, if you know, for the
23 company's financial reporting and accounting?

24 A. I mean, under the agreement there are two managers that
25 are responsible for the daily operations, financial reporting,

1 accounting, and running the business, and that was Al Baker and
2 Ray Rastelli, Jr.

3 Q. The managers?

4 A. Yes.

5 Q. Is Daymond a manager?

6 A. Absolutely not.

7 Q. I'd like to direct your attention to Section 4.1(d) of the
8 agreement, if you don't mind flipping to that for me. It's on
9 page 10 of the operating agreement. And just take a minute to
10 review it to yourself, please.

11 Did you have a minute to look at this?

12 A. Yes, I did.

13 Q. Now, 4.1(d), the title of this clause is "Defining
14 Managers' Roles," correct?

15 A. Yes.

16 Q. Okay. Within this clause, does any of this information
17 pertain to Mr. John?

18 A. No.

19 Q. Can you please turn to page 15 of the operating agreement.
20 It's Section 5.2. And just read it to yourself, please. Let
21 me know when you're finished.

22 A. I'm finished.

23 Q. What is your understanding of this provision?

24 A. My understanding is that the managers obviously are
25 operating and running the company, but any other member does

1 not participate in the management or control of the company.

2 DF Ventures, slash, Daymond is the sole non-managing
3 member. So as a member, he's not able to participate in the
4 management or control of the company's business.

5 Q. Does Mr. John have the power to act or bind FOFBakers?

6 A. Absolutely not.

7 Q. Where is that absolutely vested?

8 A. That's exclusively vested with the managers of the company
9 and Al Baker and Ray Rastelli.

10 Q. Can you please turn to Section 6.1(c). That's page 3 of
11 the operating agreement. And just take a minute to review that
12 section for me, please.

13 A. Yes.

14 Q. Is this a provision that sets forth Daymond's specific
15 responsibilities as it relates to the operating agreement?

16 A. Yes, it does.

17 Q. All right. And what do you understand those
18 responsibilities to be pursuant to this clause in the operating
19 agreement?

20 A. I mean, I discussed a little bit earlier, Daymond was
21 tasked with the responsibility of being a brand ambassador, to
22 be a television personality; to help and assist with marketing
23 and promotion utilizing his Rolodex; you know, to bring
24 potential opportunities forward; and in my silly analogy as I
25 mentioned before, you know, kissing babies and shaking hands

1 and just bringing general love and attention to the company in
2 any way he could in a positive way.

3 Q. Is there anywhere else in the agreement that Mr. John's
4 specific role is regulated or only this clause?

5 A. I think this is the only clause in the agreement that
6 specifically speaks to what his role is.

7 Q. Thank you. Could you turn to article 11 of the operating
8 agreement? It's pages 23 and 24. Can you take a moment just
9 to read over that.

10 A. Okay.

11 Q. Can you describe in your own words what this clause
12 is?

13 A. I mean, this is a confidentiality clause that, you know,
14 restricts any of the members to the agreement from divulging
15 any specific proprietary data, information, trade secrets, to
16 make them public, it prohibits us from making them public.

17 Q. And to my knowledge, based on your participation in the
18 creation of the operating agreement which you testified to
19 earlier, what's the underlying reason as you recall pertaining
20 to why this was included in the operating agreement, this
21 confidentiality clause?

22 A. I think it would be twofold. It serves as a protection of
23 the overall company in FOFBakers, LLC. Again, there's a lot of
24 specificity in what everyone's bringing to the table. There's
25 the actual product, the patent, the processes of the deboning,

1 there's the procuring the actual underlying product, there's
2 marketing strategies, there's customer lists, there's pricing
3 strategies. So a lot of this, again -- sorry I'm silly with my
4 examples. But, you know, it's like in the days when McDonalds
5 made the Big Mac, they don't want to give you the recipe for
6 their secret sauce so it could be knocked off and duplicated,
7 so they're very proprietary to that. Well, not just their
8 secret, but when it came to our venture, there's a lot of
9 multiple and different levels of confidential information that
10 protects FOFBakers in the marketplace so the product can't be
11 duplicated, knocked off, or just with regards to competing
12 companies to understand who our customers are, pricing
13 strategies, who we use to market and brand the company, you
14 know, how we utilize Daymond's economic terms and things like
15 that.

16 And then on an individual level, each individual member
17 kind of brought a different skillset to this entity. Again,
18 Mr. Baker brought his patents and the development of the
19 product; you know, the Rastellis brought to the table obviously
20 their business acumen and history in this business of
21 understanding the meat market, procuring, distribution,
22 customer lists, contacts; and Daymond brought a vast list of
23 not just -- you know, just companies, but CEOs, who the right
24 people to call, marketing and branding strategies, you know,
25 certain initiatives on how you get that brand recognition out

1 there.

2 And those are all relevant to the individual members to
3 protect their individual brands also. So it's kind of both --

4 Q. Okay. And so how would the dissemination of the document
5 you just referenced in the marketplace affect the company, if
6 at all?

7 A. I mean, just as I discussed a little bit earlier, by
8 allowing everybody in the marketplace, and especially
9 competitors, to lift the hood and see what's under it, they
10 learn about your product, where you're sourcing it from, the
11 pricing, your customer lists, your economics, you know, your
12 marketing and branding strategies, and you're giving them a
13 competitive advantage to go out and compete with you to get
14 and maybe steal away some of your market share and
15 cannibalize kind of what your productivity and efficiency is in
16 a business.

17 Q. Can you look down a little bit further to 11.3. It's
18 still part of the confidentiality clause that's on page 24.
19 And just take a minute to review that subsection, please.

20 A. Yes.

21 Q. Can you generally describe the terms of this clause?

22 A. I mean, this clause ties to the confidentiality clause in
23 that it was an important provision of the agreement. You know,
24 if certain information is being -- or confidentiality
25 information is being divulged in the marketplace, it severely,

1 first of all, injures FOFBakers, LLC because we could start to
2 lose business, we could start to lose clients, we could start
3 to be losing, again, a market share.

4 And in order to stop the bleeding, you need a mechanism in
5 place that you could go to court and look for injunctive relief
6 to kind of reel some of that back in so that the damage is
7 somewhat limited.

8 That goes also on a member level. If certain confidential
9 information is being shared about a member, you need a way to
10 curtail that immediately so it just doesn't kind of have a
11 snowball effect and become irreparable.

12 So you need to have the access to court and agreements
13 that if something like this becomes detrimental and causing
14 harm to the company or an individual member, that there is
15 a mechanism to move in an expedited basis to have it
16 addressed.

17 Q. And that would be injunctive relief or monetary relief?

18 A. That would be injunctive relief.

19 Q. Did all the parties agree to the final terms of this
20 agreement?

21 A. Absolutely, yes.

22 Q. Are you aware of an action initially brought by the
23 Rastellis against the Bakers in 2019?

24 A. Yes, I am.

25 Q. What was your understanding of the suit?

1 A. Well, to give it a little bit of color leading up to that,
2 the DF Ventures side had brought forward one of the three
3 largest fast food companies in the world as a potential joint
4 venture partner. This company had expressed serious interest
5 in moving forward and at that point, it became, you know,
6 pertinent that the company move forward in pricing decisions
7 and how to present the deal, what we were shooting for and
8 things like that, which is not our role.

9 So we looked towards the managers of the company, Al Baker
10 and Ray Rastelli, Jr. to sit down, make certain business
11 decisions, figure out how it was going to be presented to this
12 company and, most importantly, come up with pricing decisions
13 and approval so this could move forward because it seemed like
14 this was a very live and viable option.

15 So at that point, Mr. Baker was being completely
16 non-responsive, he was not responding to emails. On the DF
17 Ventures side, our sales team was trying to keep this
18 opportunity alive and viable, but it was beginning to become
19 uncomfortable because he couldn't even give answers and we were
20 kind of stalling for time.

21 So because the managers couldn't come to the table and
22 have a meeting of the minds, I believe this action in 2019 was
23 brought by the Rastelli parties to force Mr. Baker to come to
24 the table and serve in his role as manager so that we could
25 move the business forward.

1 Q. Were there any interim rulings before the matter was
2 ultimately concluded regarding the Rastelli action?

3 A. Yes, there were.

4 Q. Okay. Can you explain those, please?

5 A. Managers went to court, and then I believe an arbitrator
6 was assigned and all of these management issues were brought
7 before the arbitrator and the arbitrator ruled in the
8 Rastelli's favor on each and every point.

9 And at that point, Mr. Baker then began cooperating and
10 participating in management meetings so that we could then get
11 the information we needed to potentially move forward with the
12 fast food company.

13 Q. So following the arbitrator's decision, Mr. Baker began
14 cooperating at that point, to your knowledge?

15 A. He began participating in management meetings, yes.

16 Q. At some point did DF Ventures get involved in this
17 underlying action?

18 A. Yes. After those matters were resolved with regard to the
19 managers, there were still issues that were on the table as
20 part of the litigation. It was important that we intervene to
21 protect our interest in (Inaudible) --

22 (Court reporter interruption)

23 THE WITNESS: I think it was just one word. And I'll
24 try to speak up better. I think it was just to protect our
25 interest.

1 Q. So what happened next in regards to the matter?

2 A. So at that point, we were in mediation. It was
3 recommended we go to mediation. And all three parties
4 participated in, you know, lengthy mediation to finalize any
5 outstanding points so that we could move forward and, you know,
6 have a business to operate.

7 And not to be corny again, but to live happily ever after
8 and create a win-win-win situation.

9 Q. Were all parties at that mediation represented by counsel?

10 A. Absolutely.

11 Q. And did the judge act in any type of role acting as a
12 mediator?

13 A. Yes, a judge was assigned as the mediator and was very
14 instrumental. We had a few different mediation sessions and a
15 lot of back and forth and was very integral to the whole
16 process of mediation.

17 MS. PRIMAVERA: Your Honor, may I hand the witness
18 what was previously entered into evidence as DJ-2? It's the
19 settlement agreement.

20 THE COURT: Of course.

21 BY MS. PRIMAVERA:

22 Q. Mr. Fox, are you familiar with this document I just handed
23 you?

24 A. Yes, I am.

25 Q. Can you please identify it for the record?

1 A. This is the settlement agreement and mutual release
2 between the three parties.

3 Q. All right. Now, you just testified that there was a
4 mediation.

5 Did all the parties participate in the negotiation and
6 drafting of this agreement? And by all the parties, I'm
7 referencing the Bakers, Rastellis, and DF Ventures, including
8 Daymond John?

9 A. Yes, all three parties attended. They were all
10 individually represented by counsel. The Rastellis had Hyland
11 Levin as counsel, I was there along with New Jersey counsel on
12 behalf of DF Ventures.

13 And from the very beginning, the Bakers had multiple
14 attorneys. I believe they actually had four attorneys from the
15 very beginning, beginning with John Patrick. He was eventually
16 replaced by someone named Ed Heben.

17 Ed Heben then had New Jersey counsel working with him on
18 behalf of the Bakers named Greg Lomax. And I believe after Ed
19 Heben, then there was also a Jayne Juvan, who was attorney out
20 of Ohio. So the Bakers had four attorneys throughout the
21 process.

22 Q. At the time the settlement agreement was finalized and all
23 parties signed off on it, were the Bakers represented by
24 counsel?

25 A. At all times they had at least one, if not more than one,

1 law firm that was representing them at all times.

2 Q. I would like to call your attention to paragraph 5 of
3 DJ-2. It's on page 2 of the settlement agreement.

4 A. Yes.

5 Q. Could you please read this clause to yourself first?

6 A. Okay.

7 Q. And you're familiar with these terms?

8 A. Yes, I am.

9 Q. Can you read into the record just the first two sentences
10 of this paragraph, stopping before the fourth to the last
11 sentence up that starts "each party and Rastelli Brothers,"
12 please.

13 A. Read this whole thing out loud?

14 Q. Yes.

15 A. "Each party and Rastelli Brothers, Inc., Jabez baker, LLC,
16 Brittani Baker, and Sabrina Baker forever agree not to solicit,
17 disrupt, interfere with, disparage and/or defame any other
18 party and such other party's employees, vendors, and
19 customers, current and/or prospective, and those of any entity
20 any such other party operates, has control of, or has any
21 interest in.

22 "Each party and Rastelli Brothers, Inc., Jabez baker, LLC,
23 Brittani Baker, and Sabrina Baker forever agree not to make any
24 written or verbal remarks or statements, even in the form of an
25 opinion, about any other party to anyone including, but not

1 limited to, any such other party's employees, vendors, and
2 customers, current and/or prospective, and those of any entity
3 any such other party operates, has control of, or has any
4 interest in that are in any way negative, disparaging, or false
5 or which could adversely impact the reputation, goodwill,
6 credibility or value of any such other party or entity or could
7 discourage current and/or prospective customers from buying
8 products from them.

9 "Except as may be necessary to comply with the rights and
10 obligations under this agreement, the operating agreement, the
11 amendment to operating agreement of FOFBakers, LLC and the
12 addendum to the amendment of operating agreement of FOFBakers,
13 LLC, each party and Rastelli Brothers, Inc., Jabez baker, LLC,
14 Brittani Baker, and Sabrina Baker forever agree not to contact
15 any other party's employees, current and/or prospective, and
16 those of any entity any such other party operates, has control
17 of or has any interest in."

18 Q. Okay. Thank you. How did this clause come about while
19 the agreement was being negotiated in 2019?

20 A. I mean, this was an important clause. I mean, I would
21 basically say that this agreement was kind of resetting where
22 the business was at. It was almost like, okay, let's leave the
23 past in the past, let's move forward, let's create a win-win
24 situation.

25 I mean, again, I'm silly with my analogies, but I guess it

1 was kind of like a couple that's leaning towards a divorce that
2 goes to couples counseling and comes out of it and says, you
3 know what, we're going to move forward with a business here,
4 everything else is in the past.

5 So it was making it very clear that not only were things
6 in the past, but nothing from the past was going to be divulged
7 and we were going to be harmonious in our efforts to move
8 forward to create a win-win situation and not, you know, hurl
9 any negativity publicly about each other to anybody and, like I
10 said, to make this business more efficient and happy going
11 forward.

12 Q. Okay. What, if anything else, did the Bakers receive as a
13 result of the settlement agreement, if you remember?

14 A. Well, as part of the release, it was negotiated that the
15 Bakers would receive \$33,333 as an upfront payment. They
16 received \$100,000 spread out over the course of the upcoming
17 year, individual payments of \$8,333 each.

18 And then they received a royalty on all gross sales of the
19 product moving forward of four percent on the first \$5 million
20 that was sold thereafter, which reduced down to three percent
21 thereafter.

22 Q. This was from 2019 going forward?

23 A. From the settlement agreement, yes, in November -- I am
24 sorry, 2019. I got to check on the month.

25 Q. Okay. Thank you.

1 Can you turn to the end of the agreement. It's after the
2 signature page. It's the amendment, the operating agreement
3 that's part of DJ-2, because it was part of the settlement
4 agreement?

5 A. Yes.

6 Q. All right. It's page 3 of the amendment.

7 A. Yes.

8 Q. Okay. Can you just review that very brief clause to
9 yourself?

10 A. Which clause?

11 Q. It's paragraph 5 of the amendment, page 3, "Daymond and
12 Rastelli partner shall separately determine a mutually
13 acceptable arrangement."

14 A. Yes.

15 Q. Are you familiar with this clause?

16 A. Yes, I am.

17 Q. What were the terms of that agreement?

18 A. The terms of that agreement were that DF Ventures would
19 receive a 1.777 percent royalty on all gross sales moving
20 forward -- I am sorry, on the first \$5 million moving forward,
21 thereafter reduced to 1.3333 percent of all gross sales, and
22 would retain their economic interest of 20 percent solely in
23 case that the company was sold in the future.

24 Q. Okay. Why was that agreement made separately?

25 A. Well, you have to understand, we were in Camden, New

1 Jersey multiple days, from what I remember, in mediation. We
2 were into the late hours of the evening and it seemed like the
3 parties were finally coming to an agreement.

4 Certainly the Bakers and the Rastellis had come to an
5 agreement on the economic terms that I just laid out with
6 regards to the Bakers. We didn't want to hold up at that hour
7 of the night anything going further because we had never really
8 thought about what does this mean to DF Ventures as far as the
9 economics.

10 As I just mentioned, the Bakers were receiving, you know,
11 a cash payment of \$33,000 upfront, \$100,000 over the first
12 year, and then a royalty. We hadn't really thought about how
13 those economics would play out. So rather than sitting there
14 at -- I believe it was already 9:30 and 10:30 at night -- we
15 had momentum that we were going to kind of come to an agreement
16 that we were going to settle and what those terms were, we said
17 that rather than holding this up, we'll sit down and figure it
18 out, but that really wasn't at that point the crux of the
19 controversy, so why delay things further when it looked like
20 things were going to settle.

21 Q. And other than the operating agreement, the settlement
22 agreement, including this addendum, do any other agreements
23 exist between DF Ventures and the Rastellis relating to
24 FOFBakers?

25 A. Absolutely not, no.

1 Q. How much has DF Ventures received to date relating to the
2 settlement agreement, if you know?

3 A. From the settlement agreement, I believe we received
4 approximately -- up to this date, approximately \$47,000.

5 Q. And how is the 1.777 percent calculated?

6 A. It was actually -- although it seems complicated, it was
7 rather simple. We basically just looked at what the royalty
8 rate was that the Baker family received, which was four
9 percent, and then we just did basically what our share of that
10 would have been based upon the original agreement.

11 The Bakers owned 45 percent equity interest, we owned
12 20 percent. So we basically got that fraction multiplied by
13 four percent. So if you took 20 divided by 45, multiplied it
14 by four percent, we got 1.7777 percent.

15 And their reduction down to three percent was the same
16 mathematics, that basically pro rata, we would be equal to
17 1.333 percent. But we didn't even receive any of the money and
18 cash upfront or the \$100,000 in payment, so we cut that out
19 that it was just pro rata based upon what their royalty rate
20 was.

21 Q. Since meeting the Bakers on Shark Tank, how much, in
22 anything, has Daymond made or loss?

23 A. Since meeting on Shark Tank, Daymond lost at least
24 \$86,000, and it's probably more.

25 MS. PRIMAVERA: Your Honor, may I show the witness

1 an exhibit that's not yet been entered into evidence, but we
2 did previously mark it as DJ-20. It is a spreadsheet and it's
3 one of the documents that Ms. Brittani Baker posted on one of
4 the TikToks.

5 THE COURT: Well, if it's been on TikTok, then you can
6 admit it into evidence. Go ahead.

7 MS. PRIMAVERA: Thank you.

8 (EXHIBIT DJ-20 WAS RECEIVED IN EVIDENCE.)

9 MS. PRIMAVERA: May I hand the exhibit to the witness?

10 THE COURT: Please do.

11 BY MS. PRIMAVERA:

12 Q. Mr. Fox, could you take a moment just to review that
13 spreadsheet I just handed to you that's marked DJ-20?

14 A. Okay.

15 Q. Are you familiar with this document?

16 A. Yes, I am.

17 Q. What is it?

18 A. It's a spreadsheet, I believe, prepared by the Rastellis
19 that they would have distributed to all of the members. It
20 doesn't really tell me at what points in time, but it lists
21 certain sales, certain gross margins, internal economics,
22 pricing structures with regard to FOFBakers and the products
23 that we sell.

24 Q. Would you consider the information contained in that
25 document to be confidentials to FOFBakers, LLC?

1 A. Absolutely.

2 Q. Okay. Are there any consequences of this document being
3 made public?

4 A. I mean, absolutely. Similar to what I had mentioned
5 before, you know, by releasing this into the general public, it
6 gives certainly competitors an ability to -- as I use my
7 analogy, lift the hood up and see what's, you know, going on
8 inside with regard to pricing, certain accounts, you know,
9 gross margins, internal economics with regard to licensing fees
10 and economic interests, all kinds of just proprietary
11 information that you would never want your competitors to
12 see.

13 Q. Okay. Thank you.

14 MS. PRIMAVERA: Your Honor, I have another exhibit,
15 it's premarked DJ-21.

16 Again, it's a document that's pulled off one of
17 Ms. Baker's TikToks, Ms. Brittani Baker.

18 THE COURT: You may show it to the witness.
19 It's admitted into evidence.

20 (EXHIBIT DJ-21 WAS RECEIVED IN EVIDENCE.)

21 MS. PRIMAVERA: Thank you very much, Your Honor.

22 BY MS. PRIMAVERA:

23 Q. All right. Mr. Fox, do you mind reviewing that?

24 A. No problem. Just a second.

25 Okay. I'm ready.

1 Q. Okay. What is that document?

2 A. It looks like an internal email from Ray Rastelli, III, to
3 the members of the company.

4 Q. Can you describe generally what it's saying, what it's
5 stating?

6 A. It's basically going through our entire marketing,
7 branding optimization strategies, the individual outside
8 third-party vendors that were providing certain services at
9 that time as far as helping get our product not only to market
10 but to try and get the branding message out there and exposure
11 into the marketplace and the cost associated therewith.

12 Q. Okay. And would you consider the information contained in
13 this document to be confidential?

14 A. Absolutely.

15 Q. Are there any consequences for it to be made public?

16 A. Yes, there are.

17 Q. Can you describe it?

18 A. I mean, this email is very particular, so this really
19 gives competitors and just everybody out in the marketplace a
20 real snapshot of our branding and marketing strategy. It
21 mentions four or five different specific companies by name, so
22 now competitors or anybody in the marketplace would find it of
23 interest to see how much we're spending with those companies,
24 what exactly those companies are doing, could give competitors
25 access to companies that we were doing business with that could

1 worked hard for for 30-some-odd years.

2 MS. PRIMAVERA: Your Honor, this is not a TikTok.
3 It's the website bbqconsulting.com, which we would like to
4 stipulate with the Bakers that they operate currently. This is
5 just a screenshot of the page of the website.

6 Are the Bakers able to -- I'm blowing it up on the
7 screen. If they're able to see it, are they able to confirm
8 that this is the website that they operate and have control
9 of?

10 THE COURT: Mr. Baker, Ms. Baker, is this your
11 website?

12 MS. BRITTANI BAKER: That is our website, and
13 our website domain that we own for Bubba's Boneless Ribs,
14 yes.

15 THE COURT: All right. Thank you. It's admitted into
16 evidence.

17 (EXHIBIT DJ-22 WAS RECEIVED IN EVIDENCE.)

18 MS. PRIMAVERA: Thank you, Your Honor.

19 BY MS. PRIMAVERA:

20 Q. Mr. Fox, are you aware that there is a website that's
21 operating called bubbasbonelessribs.com?

22 A. Yes, I am.

23 Q. I'm going to hand you what's currently on the screen that
24 we're premarking as DJ-22.

25 Is bubbasbonelessribs.com still in operation for customer

1 use?

2 A. No, it's not.

3 Q. Why not?

4 A. Approximately a week ago, somehow the bubbasbonelessrib
5 website, which is germane to the company's business, was
6 somehow diverted by Brittani Baker to when you open it up it
7 automatically shoots over to bbqconsulting.com, so it bypasses
8 the ability for customers to be synergized to shop and make
9 orders.

10 Q. So if I'm a consumer and I'm going online to try to buy
11 the ribs and I type in bubbasbonelessrib.com, it's going to
12 direct me now to bbqconsulting.com automatically?

13 A. Automatically.

14 Q. Okay. And when I go there, this is what I see as a user,
15 correct?

16 A. Yes, correct.

17 Q. So when I go to the webpage, the first line that I see is,
18 "Looking for boneless ribs?"

19 Can you read the rest of that?

20 A. Yes.

21 "Sorry, they are not available right now. Unfortunately,
22 working with Daymond John, Rastelli Foods, Larry Fox, Ray, Jr.,
23 Ray Rastelli, III, is a nightmare and I have to bring awareness
24 to our story and fight for our product."

25 Q. Is there anywhere on that website, the former

1 bonelessrib.com website, where a consumer can purchase the
2 product anymore?

3 A. No. That's all been shut down.

4 MS. PRIMAVERA: Thank you. I have nothing further.

5 THE COURT: Mr. Al Baker, do you have any questions of
6 this witness?

7 MR. BAKER: I do. I have a couple questions.

8 C R O S S - E X A M I N A T I O N

9 BY MR. BAKER:

10 Q. Let's go back to, Mr. Fox stated that in the initial --
11 let's call it the initial year, you used a number of \$400,000
12 in the initial Shark Tank orders.

13 I wanted to ask Mr. Fox, when that account was closed, how
14 much was remaining in that account, Mr. Fox?

15 MS. PRIMAVERA: Objection. Mischaracterizes
16 testimony.

17 THE COURT: Well, Mr. Fox, can you answer the
18 question?

19 THE WITNESS: I can try to answer your question, Your
20 Honor.

21 I mean, Mr. John has nothing to do, and I never had
22 anything to do with any of the accounts or accounting or
23 records, so we don't have access to it, so we would not know.

24 MR. BAKER: I have another question then.

25 BY MR. BAKER:

1 I could keep going on and on. I mean, Stew Leonard's.
2 We brought you Stew Leonard's to the table. You appeared at
3 Stew Leonard's. I sat there and went shopping for coleslaw to
4 give to the customers as you were handing out ribs and sat
5 there shaking hands. So, yeah, you were involved every step of
6 the way, Al.

7 MR. BAKER: May I be more specific, Your Honor?

8 THE WITNESS: Please do.

9 BY MR. BAKER:

10 Q. Was I ever in the room when we closed a deal, Mr. Fox?

11 A. We're the brand ambassador. To answer the question,
12 we're not involved in closing deals, Al. You're the manager,
13 the Rastellis are the manager. We never closed a deal.
14 We brought relationships to the table to the managers to
15 discuss.

16 Let me go back in time again. We brought together Zulily.
17 We handed it off to the managers for you guys to figure out the
18 next steps. Sure, that was our relationship, so we were
19 involved in the early stages of those conversations, and also
20 administrating it because we have history.

21 Good Morning America, we didn't close the deal. We
22 brought it to the managers for them to discuss to figure out do
23 we move forward with Good Morning America. I remember you on
24 those conversations.

25 We brought forward multiple grocery stores, we brought

1 forward the New York Yankees. We handed them off to the
2 managers to discuss. We were not in the room to close any of
3 these deals. That's not our job.

4 Let's go to Carl's, Jr. We were intricately involved with
5 bringing that to the forefront. Daymond waived the speaking
6 fee in goodwill to show them that, hey, these are good people
7 to be involved.

8 We didn't have anything to do with the detailed
9 negotiations. We don't understand the pork and the yields and
10 the pounds and the this or that, but we, again, brought these
11 things to the forefront.

12 I'll give you another example. It wasn't our job, Al, but
13 since COVID, there's been absolutely no product available to
14 sell because supply chains have been broken and the biggest
15 problem this company has had, that none of us are really making
16 any money, is there's no product to sell.

17 It wasn't our job, but we went out there and figured out
18 your relationship we had where Daymond had a public speaking
19 gig, and I actually shook someone's hand that it turned out he
20 went to the same high school as me, that we were able to open
21 up an opportunity of a supplier in Mexico when we were at a
22 complete standstill in this business.

23 And I introduced the managers to these two suppliers in
24 Mexico for both you and your family and the Rastellis to go
25 back, that were finally actually ready to bring product in to

1 product that we had very little inventory on, we tried to think
2 about what we could do at that point.

3 We participated in conversations with your family and
4 the Rastellis about reaching out to an investment banking
5 company to put together a deck, that we were very involved in
6 trying to help with our expertise with with regard to seeing if
7 there was any way to sell the company or find an infusion of
8 capital when we had no inventory.

9 Those conversations went on for six to nine months.
10 We participated in those. Then we all decided to break up
11 tasks and figure out who we could bring this project to now
12 that we were trying to source it and sell it. So I went out to
13 certain relationships that we had; the Bakers, you guys all
14 brought it out, your team, Jennifer Flack was helping; the
15 company Mustin helped to put it together; the Court was
16 helping; the Rastellis. We were intricately involved in that.

17 But we were pretty much at a standstill with regard to
18 inventory because there was no way to get the supply chain to
19 move any faster and we had no inventory to sell. So being the
20 brand ambassador switched to being involved to see if there was
21 a way to help raise money for the company, to get an infusion
22 of capital, to sell the company.

23 Sadly, nobody seemed interested. We were all on calls
24 and we were all frustrated that, unfortunately, it wasn't
25 progressing forward. So to help the company while we had no

1 Since 2019, I assume you mean since the settlement
2 agreement, soon thereafter we had COVID three, four months
3 later --

4 (Court reporter interruption)

5 THE COURT: And remember, Mr. Fox, talk slowly,
6 please.

7 THE WITNESS: Absolutely, Your Honor.

8 THE COURT: Slower than you're talking.

9 (Discussion held off the record)

10 THE WITNESS: All right. So to just take a step
11 backwards, with regard to the brand ambassadorship, we signed
12 the settlement agreement in late 2019.

13 Soon thereafter, we were all confronted with
14 COVID, where we had very limited to no supply. So being the
15 brand ambassador at that point, there wasn't any product to
16 push, there was no way to go to market, there was no way to
17 bring in new accounts, new relationships, and our focus as a
18 company, from what I was told, switched to finding a new
19 supplier.

20 That's when DF Ventures and Daymond John jumped in,
21 reached out to their contacts and was able, through our
22 relationships, to bring forward a new supplier that was going
23 to be vetted by both the Bakers and the Rastellis so that we
24 could have a new supply because currently there's nothing we
25 could do.

1 should say anything to do with that. Never even discussed or
2 mentioned.

3 Finally, because we were getting upon desperate times in
4 2022 and still had no supply, I went back to Smithfield and
5 said, "Can you help us here a little bit? Do you have any
6 suppliers? You mentioned that we have to get better pricing."
7 And they took about two to three weeks to get back to me.

8 And in February, I reported to you, your family, and your
9 attorney and said, "They're actually going to try to help us
10 and synergize us with some of their suppliers down in Mexico
11 and make introductions."

12 I got on the phone with them in February, they gave a few
13 of those leads. I immediately tasked it to the entire team at
14 that point. And at that point, there was nothing else for DF
15 Ventures or myself to do.

16 We're not involved in product development, costing,
17 slicing ribs, dicing ribs. We know nothing about it. We
18 handed it off to the entire team. And then meetings were set
19 up. You started to vet the process.

20 And you and your father were supposed to show up at the
21 facility in May in Mexico, and the day before, you sent an
22 email and said you weren't showing up. So you guys were
23 engaged every step of the way.

24 Q. Larry, do you have a direct contact at Smithfield?

25 A. I know several of the people at Smithfield, yes.

1 confirmation for the record that in 2019 you had a business
2 dispute with the Rastellis; isn't that right?

3 A. Yes, ma'am.

4 Q. And there was a settlement agreement that came about once
5 that dispute came to resolution; is that right?

6 A. Yes, ma'am.

7 Q. And that settlement agreement is --

8 MS. COLWIN: On the record, Your Honor, that's already
9 in the record as DJ-2. It's already been admitted into
10 evidence.

11 THE COURT: Correct.

12 BY MS. COLWIN:

13 Q. Mr. Baker, that is your -- you signed that agreement;
14 isn't that right?

15 A. Can I see the agreement you're talking about?

16 Q. The settlement agreement. DJ-2 is being shared with you,
17 Mr. Baker.

18 Do you see that?

19 A. Can you show me my signature, ma'am?

20 Q. Sure. It goes down to page 5.

21 Mr. Baker, that's your signature there; is it not?

22 A. Yes, ma'am.

23 Q. And on the pages preceding, I'll have them show it to you
24 beginning with page 1. Those are your initials JAB. We're
25 going to scan from the beginning of the document. That's

1 page 1, page 2, page 3, page 4?

2 Those are your initials; isn't that right, Mr. Baker?

3 A. Yes, ma'am.

4 Q. Now, in this -- before this settlement agreement was
5 memorialized and signed by the parties, you were represented by
6 counsel during the settlement of this dispute; isn't that
7 right?

8 A. Yes, ma'am.

9 Q. You had Ed Heben from Heben & Associates, LLC?

10 A. No, ma'am.

11 Q. You had Greg Lomax from Lauletta Birnbaum; is that right?

12 A. Yes, ma'am. He was local counsel.

13 Q. Jayne Juvan from Tucker Ellis?

14 A. Correct.

15 Q. John Lewis from Tucker Ellis?

16 A. Could you repeat that, please?

17 Q. John Lewis from Tucker Ellis as well?

18 A. I don't recall a Don Lewis.

19 Q. Mr. Baker, I'm not sure if you heard me correctly. John,
20 J-O-H-N, Lewis?

21 A. Correct.

22 Q. And this settlement agreement was also worked on by a
23 Federal Magistrate Judge by the name of Joel Schneider; isn't
24 that right?

25 A. Correct.

1 Q. Where does it say anywhere on this document "I'm signing
2 under duress"?

3 A. It does not.

4 Q. Mr. Baker, I have a question pending.

5 A. I am sorry. Repeat that, please, ma'am.

6 Q. I asked a question. Where on this document does it say "I
7 am signing under duress"?

8 A. It does not.

9 Q. Where on this document does it say "I'm forced to sign
10 this agreement"?

11 A. It does not.

12 Q. Where on this document does it say "I don't agree with the
13 terms of this agreement"?

14 A. It does not.

15 Q. Let's go back to the restrictions. In paragraph 5 it says
16 clearly that everyone involved that signed this agreement are
17 not to make negative comments about each other; isn't that
18 right?

19 A. Yes, ma'am.

20 MS. COLWIN: I'd ask for demonstrative DJ-24.

21 Your Honor, in accordance with your ruling as of
22 yesterday morning, the demonstrative and the exhibits have
23 been admitted into evidence.

24 It's DJ-24. We'd ask that that be admitted into
25 evidence as well.

1 THE COURT: Any objections?

2 MR. DAHAN: No objection, Your Honor.

3 THE COURT: These are social media profiles of some
4 kind; is that correct?

5 MS. COLWIN: It is, Your Honor.

6 THE COURT: All right. They'll be received into
7 evidence, DJ-24.

8 (EXHIBIT DJ-4 WAS RECEIVED IN EVIDENCE.)

9 MS. COLWIN: Okay. Thank you, Your Honor.

10 BY MS. COLWIN:

11 Q. In DJ-24, it says -- it has a picture of Daymond John and
12 the word "thief," correct, Mr. Baker?

13 A. And the -- I could not hear the end. Can you repeat that?

14 Q. And word "thief."

15 A. Speaks or -- I'm sorry.

16 Q. "Thief."

17 A. Oh, thief.

18 Q. "Thief," Mr. Baker.

19 A. It does. May I comment on --

20 Q. I'd like to ask another question, Mr. Baker.

21 THE COURT: Hold on, Mr. Baker.

22 There's no question pending. Just answer the
23 questions, please.

24 MR. BAKER: Okay.

25 MS. COLWIN: I'd ask for DJ-10, the video, to be

1 placed up.

2 It's admitted into evidence, Your Honor.

3 THE COURT: It's in evidence.

4 (Recording played)

5 BY MS. COLWIN:

6 Q. Did you hear that, Mr. Baker?

7 A. Can you play it again? I did not hear. I was writing a
8 note.

9 (Recording played)

10 BY MS. COLWIN:

11 Q. Mr. Baker, would you agree with me, "My family is so
12 confident that fraud and illegal activities is taking place,"
13 correct?

14 A. I did not hear the video, ma'am.

15 MS. COLWIN: If you permit me, I will just -- because
16 it's already in the record, so I can get through the
17 examination quickly, with your permission, Your Honor.

18 THE WITNESS: Okay.

19 BY MS. COLWIN:

20 Q. Mr. Baker, I will represent to you as an officer of the
21 court that DJ-10 that's in evidence has the following statement
22 made by Brittani Baker: "My family and I are so confident that
23 fraud and illegal activities are taking place."

24 You'd agree with me that that's negative, correct?

25 A. Correct.

1 Q. I'm not going to play any of the video. There's obviously
2 something that's happening when we share it.

3 But let me represent to you as an officer of the court,
4 DJ-8, that's already in evidence, that Brittani Baker stated
5 the following: "So today I'm going to give you more evidence
6 on how the Rastellis and Daymond John were manipulating the
7 numbers for their benefit."

8 You would agree with me that that's negative, Mr. Baker,
9 correct?

10 A. Yes, ma'am.

11 MS. COLWIN: DJ-25, Your Honor, is not admitted into
12 evidence, but consistent with the ruling that you provided to
13 the parties yesterday, we'd ask that it be admitted into
14 evidence.

15 THE COURT: I don't know what it is because it's not
16 listed. What is it?

17 MS. COLWIN: It's a video -- another video posted two
18 days ago by Ms. Brittani Baker.

19 THE COURT: Okay.

20 MS. COLWIN: I'd ask -- we will play it this time.
21 This one can be played, Your Honor.

22 THE COURT: Play it.

23 (Recording played)

24 MR. DAHAN: We can't hear it on our end.

25 (Recording played)

1 THE COURT: There's no audio on my end. This is Judge
2 Kugler.

3 Hold on. There's a terrible feedback going on here.
4 I don't know who's doing it.

5 MS. COLWIN: Your Honor, I'll start over.

6 And, Your Honor, just so that the record is clear,
7 DJ-25 has been admitted into evidence, correct? It's the video
8 that we were just referring to.

9 THE COURT: It is.

10 (EXHIBIT DJ-25 WAS RECEIVED IN EVIDENCE.)

11 MS. COLWIN: Thank you, Your Honor.

12 BY MS. COLWIN:

13 Q. Mr. Baker, on that video, DJ-25, that's admitted into
14 evidence, I will represent to you as an officer of the court:
15 "We know where it went" -- meaning the \$18 million -- "to
16 Daymond John, Larry Fox, Ray Rastelli, Jr. and Ray Rastelli,
17 III."

18 You would agree with me that that statement is negative,
19 correct?

20 A. Yes.

21 Q. Now, there are -- Bubbas Q Food Trucks has a TikTok
22 account, correct?

23 A. Yes.

24 Q. And Bubbas Q Food Trucks has an Instagram account,
25 correct?

1 Instagram account, correct?

2 A. I'm not sure which account that is. I don't know a whole
3 lot about social media, ma'am.

4 Q. All right. Well, let me scroll down. It's in evidence.
5 We can clear that up at a later point with Ms. Brittani
6 Baker.

7 It says right below your -- the TikTok account that you've
8 already identified as the BubbbaQfoodtrucks TikTok account, it
9 says "Daymond John and Rastelli Foods are trying to steal my
10 family's business."

11 Do you see that?

12 A. Yes, I do.

13 Q. You'd agree that that's negative, correct?

14 A. It's true.

15 Q. I'm asking, you would agree with me that that's negative,
16 Mr. Baker, correct?

17 A. It's true.

18 MS. COLWIN: Your Honor, move to strike. I'll ask it
19 again.

20 BY MS. COLWIN:

21 Q. Mr. Baker, you would agree with me that when -- on that
22 post that says "Daymond John and Rastelli Foods are trying to
23 steal my family's business," you'd agree with me that that's
24 negative, correct?

25 A. Ma'am, I am sorry, I can't agree with you on something if

1 I don't agree with it. I agree that it's true.

2 THE COURT: Mr. Baker --

3 MS. COLWIN: I am sorry, Your Honor?

4 THE COURT: Let me try it this way.

5 Mr. Baker?

6 MR. BAKER: Yes, Your Honor.

7 THE COURT: It says "Daymond John and Rastelli Foods
8 are trying to steal my family's business."

9 Is that a positive comment about Daymond John and
10 Rastelli Foods or a negative comment?

11 THE WITNESS: It's a negative comment.

12 THE COURT: Thank you.

13 BY MS. COLWIN:

14 Q. Mr. Baker, up to about today, you have there about 50
15 posts about the Rastellis and Daymond John since May 15th,
16 correct, to the present day, about 50 posts?

17 A. Yes, ma'am.

18 Q. And as of last week, you stated that there were 3 million
19 views of these 50 posts, correct?

20 A. Yes, ma'am.

21 Q. And you can see in DJ-23 some of these posts --

22 MS. COLWIN: Can you just pull that back up for
23 Mr. Baker?

24 BY MS. COLWIN:

25 Q. Some of the posts you have pinned. Do you see that on the

1 left-hand of your screen? Those are pins there.

2 Do you see where it says "pins"?

3 A. Yes, ma'am.

4 Q. At the very top of your -- of the BubbasQfoodtrucks'
5 TikTok account; is that right?

6 A. Yes, ma'am. That's what I can identify, yes, ma'am.

7 Q. You want everyone who has access to the internet to see
8 these posts, don't you?

9 A. Yes, ma'am.

10 Q. You want to talk about these posts?

11 A. Do I want to talk about them?

12 I couldn't hear what you said. Can you repeat that,
13 please?

14 Q. You want to talk about these posts?

15 A. Is that a question, ma'am?

16 Q. Yes, I'm asking a question.

17 You want to talk about these posts, don't you?

18 A. To you?

19 Q. To anyone. You want to talk about the sum and substance
20 of these posts, correct?

21 A. Well, first of all, that's not my account. But yes, we
22 want that out. We do want that on there.

23 Q. And you have a new show that's coming on your YouTube
24 channel, Bubba and Beau Show.

25 You're going to feature some of these posts on that show,

1 correct?

2 A. No, we didn't make that specifically -- we have not
3 finished the concept of the show, but we are going to have a
4 show and we're part of the media.

5 I agree. We are in the media. We both are members of the
6 media.

7 Q. And in your submission to the Court on June 11th, you
8 professed you were part of the media, correct?

9 A. I agree I'm a hundred percent part of the media. Thank
10 you.

11 Q. Mr. Baker, you have no -- as you sit here today, you have
12 no intention of stopping any of these posts, correct?

13 A. Correct.

14 Q. Mr. Baker, you've represented to the Court that you have
15 no money; isn't that right?

16 A. Well, I didn't say no money. I don't have money to travel
17 with. I'm on Social Security and a small pension, ma'am.
18 That's my only income.

19 If you want to know my income, my last licensing fee from
20 the Rastellis and DF Ventures was \$37. You asked.

21 Q. So your restaurant closed; isn't that right?

22 A. In 2015.

23 MS. BRITTANI BAKER: '19.

24 MR. BAKER: '19. 2019, I am sorry.

25 BY MS. COLWIN:

1 Q. According to Mrs. Baker, the representation that she makes
2 to the Court -- Sabrina Baker, your wife -- she also mentioned
3 to the Court that you lost your car; is that right?

4 A. No, we had our car repossessed is what she said. Yes, we
5 did.

6 Q. So just to follow up on your testimony, Mr. Baker, you are
7 on a fixed income, correct?

8 A. Correct.

9 Q. And your fixed income is comprised of Social Security and
10 an NFL pension; is that right?

11 A. Correct.

12 Q. And, Mr. Baker, FOFBakers Holding Company, LLC, their
13 financial condition is poor as well, correct?

14 A. Will you repeat that, ma'am?

15 Q. With respect to FOFBakers Holding Company, LLC,
16 their financials, the company's financials are poor as well,
17 correct?

18 A. I'm not quite understanding what you're saying. I'm not
19 being paid a lot of money, if that's what you want to know.

20 Q. But the company -- the company -- I just want to focus on
21 the company, Mr. Baker.

22 The company of FOFBakers Holding Company, LLC, it does not
23 have assets; is that right?

24 A. Correct.

25 Q. And JabezBaker, LLC has no assets, correct?

1 A. JB Baker?

2 Q. JabezBaker, LLC has no assets, correct?

3 A. Oh, JabezBaker has no assets, correct.

4 Q. Has -- okay. I just want to make sure that we're clear.

5 JabezBaker, LLC, has no assets; is that right?

6 A. Well, it owns the patent.

7 Q. Do you have any income going to JabezBaker, LLC?

8 A. No.

9 Q. Do you have any income going to FOFBakers Holding Company,
10 LLC?

11 A. I'm trying to think of where I get paid from by the
12 Rastellis. I'm not sure if that's through Jabez or through the
13 holding company.

14 Q. To your knowledge?

15 A. But my only income is from Rastelli, my only additional
16 income. I'm trying to figure out what your question is.

17 Q. Let me rephrase this.

18 A. Yes, please.

19 Q. Is there any money at FOFBakers Holding Company, LLC
20 that you could -- you, as the CEO, could take and pay a
21 debt?

22 A. The only income I get through this company, ma'am, is the
23 royalty that I just mentioned.

24 Last month was \$37. This month was \$37. There is no
25 other income.

1 correct?

2 A. No issues with what? I am sorry.

3 Q. With respect to testifying. You feel that you can
4 understand the questions being posed to you and respond
5 truthfully; is that right?

6 A. Yes.

7 I have a question, though, in regards to my answers. Are
8 my answers allowed to be as detailed and descriptive as Larry
9 Fox's answers were?

10 THE COURT: Ms. Baker, just answer the questions that
11 you're asked. If counsel needs my assistance, she will ask for
12 it.

13 MS. BRITTANI BAKER: Yes, Your Honor.

14 MS. COLWIN: Thank you, Your Honor.

15 THE COURT: Go ahead.

16 And you are to treat her as an adverse witness, right,
17 hostile witness?

18 MS. COLWIN: I am, correct.

19 THE COURT: Okay. Proceed.

20 BY MS. COLWIN:

21 Q. Ms. Baker, you have a profile on TikTok called
22 BubbasQfoodtrucks, correct?

23 A. Correct.

24 Q. And that's been reflected behind us. This is right here.
25 This is DJ-23. Correct?

1 A. Correct.

2 Q. And you also have a profile on Instagram on

3 BubbasQfoodtrucks, correct?

4 A. Correct.

5 Q. That's also in D-23 in evidence; is that right?

6 A. Yes, ma'am.

7 Q. And you have a BubbasQ60 on Instagram also; isn't that
8 right?

9 A. Yes, ma'am.

10 Q. And you have a BrittaniBoBaker on Instagram, correct?

11 A. Yes.

12 Q. And you have by now about 50 posts about Daymond John; do
13 you not?

14 A. Yes, ma'am.

15 Q. And just two days ago you commented about these
16 proceedings, correct?

17 A. Yes.

18 Q. In fact, you said, "Thank you, sister. Tomorrow's going
19 to be virtual, but I'll keep everyone posted for the next one
20 because if it's in-person, I'm inviting everybody."

21 Is that right?

22 A. Correct. The court hearings are public, correct, if
23 they're in person?

24 Q. That's not my question, Ms. Baker.

25 MS. COLWIN: And, Your Honor, I'd ask that that be

1 Honor. I apologize.

2 (EXHIBIT DJ-6 WAS RECEIVED IN EVIDENCE.)

3 BY MS. COLWIN:

4 Q. Ms. Baker, just so the record is clear, DJ-26, admitted
5 into evidence, that is your comment below the
6 BubbasQfoodtrucks, correct?

7 A. Yes, ma'am.

8 Q. And there are thousands -- similar to the comments that
9 you see here, there are thousands of comments to your post;
10 isn't that right?

11 A. Yes.

12 Q. You have millions of views, correct?

13 A. Yes.

14 MS. COLWIN: Now, Your Honor, with your permission,
15 I'm going to show video DJ-9 that's been admitted into
16 evidence.

17 THE COURT: You may.

18 MS. COLWIN: Thank you, Your Honor.

19 (Recording played)

20 BY MS. COLWIN:

21 Q. Ms. Baker, that's your image on that video; isn't that
22 right?

23 A. Yes, it is.

24 Q. And you want that video and your message to be broadcast
25 as much as conceivably possible, correct?

1 A. Yes, I do. I want to share my story with as many people
2 as I possibly can.

3 MS. COLWIN: We'll just move to strike the portion as
4 unresponsive, Your Honor.

5 THE COURT: Well, it's not a simple answer, so I'm
6 going to deny your request.

7 But let's get focussed, Ms. Baker, on the actual
8 question being asked.

9 THE WITNESS: Yes, Your Honor.

10 MS. COLWIN: I'd ask for the comment, DJ-27.

11 Consistent with your rulings of the Court, I'd ask
12 that this also be admitted into evidence, Your Honor. DJ-27
13 will be shown in just a moment.

14 (Recording played)

15 MS. COLWIN: Your Honor, may I ask that this
16 be admitted into evidence?

17 THE COURT: Is it just an audio tape? What is
18 it?

19 MS. COLWIN: It's an audio.

20 THE COURT: All right. Okay. It's admitted into
21 evidence.

22 (EXHIBIT DJ-7 WAS RECEIVED IN EVIDENCE.)

23 THE COURT: Ms. Baker, that's your voice, correct?

24 MS. BRITTANI BAKER: Yes, Your Honor.

25 THE COURT: Thank you.

1 BY MS. COLWIN:

2 Q. You're applauding that there's at least a million views as
3 of that date; isn't that right, Ms. Baker?

4 A. Yes.

5 MS. COLWIN: DJ-9, admitted into evidence, Your Honor.

6 To move things along, as an officer of the court, I'm
7 just going to state for the record what the quote is.

8 BY MS. COLWIN:

9 Q. Ms. Baker, I'll represent to you as an officer of the
10 court in DJ-9 you stated, "TikTok, I need you to do your
11 thing."

12 You stated that; did you not?

13 A. Yes, I did.

14 Q. And the reason why you state that is because you wanted
15 these posts to be disseminated as far and wide as conceivably
16 possible, correct?

17 A. My experience working with the Rastellis and Daymond John
18 is a nightmare. I'm trying to share that story with as many
19 people as I can. So, yes.

20 Q. Ms. Baker, my question was clear.

21 You want these posts to be shared with as many people as
22 possible, correct?

23 A. Correct.

24 Q. You want everyone who has access to the internet to see
25 these posts; isn't that right?

1 A. That is correct.

2 Q. In your post you have a variety of hashtags; do you not?

3 A. Yes, I do.

4 Q. You have #SharkTank, correct?

5 A. Yep.

6 Q. You have #DaymondJohn, correct?

7 A. Yep.

8 Q. You have #foryoupage, correct?

9 A. Yes.

10 Q. And these hashtags were meant to increase the reach and
11 visibility of your posts; isn't that right?

12 A. Absolutely.

13 Q. Now, you have responded to these posts as well,
14 correct?

15 A. Yes.

16 MS. COLWIN: Let me begin with DJ-12, admitted into
17 evidence, Your Honor.

18 BY MS. COLWIN:

19 Q. Now, it says -- in the comments from a TikTok user says,
20 in DJ-12, admitted into evidence: "Keep it coming. Sounds
21 like Daymond should be sued at the least and in prison
22 probably. Something he's done must be criminal."

23 You see that, correct?

24 A. Yes, I see that.

25 Q. And you commented on that right below it and you write --

1 -- that's you, BubbasQfoodtrucks, as the creator: "Thank you
2 for your support."

3 Isn't that right?

4 A. Yes.

5 Q. So you were pleased that this TikTok comment referred to
6 Daymond John as a criminal?

7 A. Because I believe that. Yes.

8 Q. I asked, you were pleased that Daymond John was deemed a
9 criminal based on your post; isn't that right?

10 A. Correct.

11 Q. And you would agree with me that having someone say that
12 Daymond John is a criminal is negative; isn't that right?

13 A. I think it's the truth.

14 Q. I'm asking, Ms. Baker, when Daymond John is described
15 as a criminal and he should be in prison, that is negative,
16 correct?

17 A. Yes.

18 MS. COLWIN: DJ-15.

19 BY MS. COLWIN:

20 Q. TikTok user in DJ-15, admitted into evidence writes:
21 "Send your story to every station, news reporter, bloggers,
22 meat bloggers, restaurant bloggers. Make as much noise as
23 possible."

24 And Daymond John was tagged. "@DaymondJohn?"

25 Is that right?

1 A. No. I was just responding.

2 Q. You just responded. You could have just done a
3 little heart, but you chose to put exclamation points,
4 correct?

5 A. I didn't put clapping hands or anything. I was just
6 interacting with their comment, thanking them for their
7 support.

8 Q. Ms. Baker, you would agree with me that exclamation points
9 means, yes, right, emphasis of it, correct?

10 A. Emphasis, correct, but that's it.

11 Q. DJ-16. On DJ-16, admitted into evidence, a TikTok person
12 writes: "Time to blow up Twitter and include Shark Tank as
13 well. No one wants bad publicity. That's bad for their
14 brand."

15 You agreed with that comment, didn't you, Ms. Baker?

16 A. I didn't agree. I just interacted with it.

17 Q. You put below that an emphasis with the exclamation
18 point?

19 A. Exclamation points.

20 Q. And that's emphasis, correct?

21 A. That's emphasis.

22 Q. And someone is saying in that comment above to "include
23 Shark Tank" and "no one wants bad publicity," you would
24 consider that negative, wouldn't you?

25 A. I guess so.

1 Q. Below that, another commenter writes: "This seems like a
2 case of fraud, breach of contract, patent infringement, and
3 contributory patent infringement and sue those personally
4 responsible."

5 You also engaged below that -- that's you,
6 BubbasQfoodtrucks' creator, correct?

7 A. Correct.

8 Q. You put in a host of exclamation points as an emphasis;
9 isn't that right?

10 A. Correct.

11 Q. DJ-19, admitted into evidence, one of the TikTok
12 commenters writes: "I definitely unfollowed him and will never
13 support a business venture he's attached to again."

14 You see that, Ms. Baker; isn't that right?

15 A. I see it, yes.

16 Q. And below that you thanked that comment; isn't that
17 right?

18 A. I'm sorry. I did what with it?

19 Q. You wrote the words, "Thank you."

20 A. Correct.

21 Q. You appreciated that this TikTok individual would never
22 want to work with any business that Daymond John supports;
23 isn't that right?

24 A. That is correct.

25 Q. And below that another TikTok comment says: "I hope no

1 one does business with him again," multiple exclamation points.

2 Isn't that right?

3 A. Yes, ma'am.

4 Q. And you responded to that commenter with multiple
5 exclamation points; isn't that right?

6 A. I did.

7 Q. Giving emphasis to their comment; isn't that right?

8 A. Correct.

9 Q. Now, you would agree with me that calling someone a thief
10 is negative, correct?

11 A. I don't really agree with that.

12 Q. So, Ms. Baker, if I went to the top of this roof -- I'm on
13 the 20th floor. If I went to the top of the roof and I said,
14 "Brittani Baker is a thief," is that positive for you?

15 A. If it's true, they're just being exposed.

16 Q. I'm asking you a question. I'm not asking about truth.
17 I'm asking a question.

18 Would it be positive for you if I stood on the top of this
19 building and said you were a thief?

20 A. It would be positive for the person that's been taken
21 advantage of.

22 Q. So, Ms. Baker, are you telling -- telling everyone out
23 here that they want to say that you're a thief, that would be a
24 positive for you, every single person --

25 A. I'm not a --

1 Q. -- that says that about you?

2 A. I'm not a thief. But if I was a thief and somebody was
3 exposing me for being a thief --

4 Q. Ms. Baker, you're not answering my question. I'm asking a
5 very simple question.

6 You would agree with me that calling someone a thief is
7 negative --

8 A. I don't agree.

9 Q. -- whether it's true or not?

10 A. I don't agree.

11 Q. You think it's positive then calling someone a thief?

12 A. If they're a thief, yes.

13 Q. You didn't -- I'm going to ask the question one more
14 time.

15 Regardless if it's true, putting truth aside, calling
16 someone a thief is negative, correct?

17 A. No. I'm not going to agree with you. I am sorry. You
18 can't make me agree with you. I don't agree because there's
19 different --

20 Q. Calling -- it's a yes or no, Ms. Baker.

21 Is calling someone a thief positive?

22 A. Yes, if they're a thief.

23 Q. Calling someone a scam artist, is that a positive in your
24 estimation?

25 A. Yes. If they are a scam artist, yes.

1 MS. COLWIN: Your Honor, I'd ask for Ms. Baker to
2 answer the question and strike the portions of her
3 question(Sic) that are not responsive.

4 THE COURT: Counsel, she has answered the question.
5 That you don't agree with it is a different story. I may not
6 agree with it, is a different story. But she has answered the
7 question.

8 MS. COLWIN: Thank you, Your Honor.

9 BY MS. COLWIN:

10 Q. Setting the truth aside, calling someone a crook is
11 negative, correct?

12 A. No.

13 Q. Setting the truth aside, calling someone a scumbag is
14 negative, correct?

15 A. I didn't call anybody any of these things.

16 MS. COLWIN: Move to strike, Your Honor.

17 BY MS. COLWIN:

18 Q. Setting the truth aside -- we're not here to debate the
19 truth. I'm asking a very simple question.

20 Setting the truth aside, calling someone a scumbag is
21 negative; isn't that right?

22 A. No.

23 Q. Saying "I hope this cancels his useless ass forever,"
24 that's negative, correct?

25 A. No. That's negative for your client, it's not negative

1 for me.

2 Q. As you sit here today, Ms. Baker, you have no intention of
3 stopping posting, correct?

4 A. My intentions are to share my family's experience.

5 MS. COLWIN: Move to strike.

6 BY MS. COLWIN:

7 Q. Ms. Baker --

8 THE COURT: Excuse me. Ms. Baker, you really need to
9 answer some questions. You're really affecting your
10 credibility.

11 MS. BRITTANI BAKER: Okay.

12 BY MS. COLWIN:

13 Q. As you sit here today, Ms. Baker, you have no intention of
14 stopping to post comments, videos, about Daymond John and DF
15 Ventures, correct?

16 A. Correct.

17 MS. COLWIN: Thank you. I have nothing further, Your
18 Honor.

19 THE COURT: All right. Let's start with counsel for
20 Rastelli. Do you have any questions at this time?

21 MR. DAHAN: Not at this time, Your Honor. Again, I
22 would just reserve to call any of the Bakers on
23 cross-examination during my case in chief.

24 THE COURT: All right.

25 Mr. Baker, do you have any questions based on what we

1 doing business with Daymond John."

2 There's a response from BubbasQfoodtrucks. It says:
3 "Thank you." It has prayer hands after that, the prayer hand
4 emoji.

5 Below that there's a comment by a member of the public
6 that says: "So Daymond had never met Rastelli, but then when
7 he did, they joined forces and played you? Am I getting that
8 right?"

9 The response from BubbasQfoodtrucks: "Exactly," with
10 multiple exclamation points.

11 Please go to the last post on that page.

12 There's a comment by a member of the public that says:
13 "Has there been an audit of all of the financial records as of
14 yet?"

15 That's relevant because you will hear testimony today
16 how the Bakers have never requested or performed an audit of
17 the records of Rastelli.

18 Let's go to the next page. Let's go to the bottom,
19 the next to the last comment where it says "I hope you."

20 This is a comment by a member of the public: "I hope
21 you sue his ass. He did you and your pops dirty. This whole
22 thing is awful. Where is the money? He's stealing it, plain
23 and simple."

24 There's a response from BubbasQfoodtrucks. And this
25 states: "Where is the money is the question."

1 Please go to the next page. Go to the post that says
2 "How come you."

3 There's a comment by a member of the public that
4 states: "How come you did not get a better top line
5 commission? Also, how is profit calculated?"

6 BubbasQfoodtrucks provides a response: "We had one
7 percent of total sales and 45 percent of net profits."

8 You will hear testimony about how that is inaccurate.

9 Please go to Exhibit 61. Can you blow up the first
10 paragraph, please.

11 This is a GoFundMe page that was established by
12 Brittani Baker and perhaps the other defendant Bakers. The
13 first paragraph reads: "We are the Bakers, a family-owned
14 business that experienced the American dream turned into a
15 nightmare. Our success on Shark Tank caught the attention of
16 viewers everywhere, but little did we know the deception that
17 awaited us from Daymond John and Rastelli Foods."

18 Please go to the next paragraph.

19 It states: "Our product has generated over
20 \$18 million in sales, however, despite this, we have received
21 less than four percent of the revenue before taxes spread out
22 over the past eight years."

23 You will hear testimony that shows that that statement
24 is inaccurate.

25 Please go to the next paragraph.

1 It reads: "We are excluded from important discussions
2 pertaining to our patented product and left without access to
3 real-time accounting information and have no access to our
4 website, Bubbasbonelessribs."

5 You will hear testimony how that is false because
6 Brittani Baker did have access to that website.

7 Please go to the next paragraph.

8 First sentence reads: "We are seeking your support to
9 fund our legal battle against these unethical practices."

10 Please go to Exhibit 62.

11 Your Honor, we have a demonstrative exhibit as well
12 that we're putting up. This is a post by a member of the
13 public that reads: "Google Philip Rastelli."

14 In response, BubbasQfoodtrucks says: "No surprise
15 there, friend. They are definitely running an organized crime
16 scheme."

17 Please go to Exhibit 63. Can you blow up that exhibit
18 where it says "Rastelli is."

19 This is a comment by a member of the public:
20 "Rastelli is Mafia," exclamation point.

21 The response from BubbasQfoodtrucks is: "Yep. With
22 their organized crime schemes preying on small businesses."

23 Please go to Exhibit 70.

24 This is a comment by a member of the public that says:
25 "@bubbasQfoodtrucks, can you let us know all the Rastelli and

1 Q. Are you aware if Shopify recently contacted Rastelli in
2 connection with that account?

3 A. Yes.

4 Q. And was that by email?

5 A. Yes.

6 Q. Was that email kept in Rastelli's records in the ordinary
7 course of its business?

8 A. Yes.

9 MR. DAHAN: Let's go to Exhibit Rastelli 71. And can
10 you blow up the middle portion of that email.

11 BY MR. DAHAN:

12 Q. Mr. Rastelli, this is an email from Theo at Shopify on
13 June 13, 2023, just a little earlier this month.

14 A. Yes.

15 Q. Do you recognize this email?

16 A. I do.

17 Q. And can you read the paragraph that says: "We have
18 received."

19 A. Yes. It says: "Hello, Ray, Theo here. I am an account
20 security support specialist here at Shopify. I hope your day
21 is going well. We have received a request from Brittani to
22 adjust the store owner email of bubbaq.myshopify.com. As per
23 our ownership verification procedure, we have requested that
24 they provide documentation providing ownership of the account.
25 As you are the current store owner, the purpose of this email

1 is to gather your feedback on this request. If you're aware of
2 this change, can you kindly advise us what has prompted this
3 request."

4 Q. Okay. Now, when it refers to Brittani, who do you
5 understand that Brittani to refer to?

6 A. Brittani Baker, who had administrative access, as she
7 requested.

8 Q. Did -- strike that.

9 Who owns the Shopify account?

10 A. Rastelli.

11 Q. Did any of the Bakers ask Rastelli to modify the account
12 as referred to in this email?

13 A. No.

14 Q. What was your reaction to Brittani Baker's attempt to
15 modify this account?

16 A. Well, dumbfounded is not a good word for this. This is
17 out and out stealing. When somebody takes the livelihood of
18 the company which is selling a company online and actually
19 takes it down like she did, and now in this case is requested
20 Shopify to actually change the ownership, which she has no
21 ownership in, it's appalling.

22 Q. Are you aware of any industry journals who wrote a story
23 about the Bakers' social media posts?

24 A. Yes, I am.

25 Q. And which one?

1 MS. PRIMAVERA: Good morning, Your Honor. Brittany
2 Primavera.

3 THE COURT: Hello, Ms. Primavera. You may begin.

4 C R O S S - E X A M I N A T I O N

5 BY MS. PRIMAVERA:

6 Q. Good morning, Mr. Rastelli. How are you?

7 A. Very good.

8 Q. With regard to FOFBakers, LLC and this venture, other than
9 the operating agreement, the settlement agreement, including
10 the addendum and supplement, do any other agreements exist
11 between DF Ventures, LLC and the Rastelli Goods?

12 A. No.

13 Q. Do you know what the total amount of distribution DF
14 Ventures has received in connection with FOFBakers, LLC in this
15 venture since its inception?

16 A. Approximately \$113,000.

17 Q. Thank you. And what is the total amount, if you know, of
18 distribution that DF Ventures has received since the 2019
19 settlement agreement?

20 A. Approximately \$49,000.

21 Q. Does Daymond John or DF Ventures participate in the
22 management or control of FOFBakers, LLC?

23 A. No.

24 Q. Does Daymond John or DF Ventures transact business for
25 FOFBakers, LLC?

1 A. No.

2 Q. Does Daymond John or DF Ventures have the power to act,
3 advise the company, or make monetary decisions on behalf of
4 FOFBakers, LLC?

5 A. No.

6 Q. The functions that I just named, are they vested
7 exclusively in the managers of FOFBakers, LLC?

8 A. Yes.

9 Q. Daymond John is not a manager of FOFBakers, LLC, correct?

10 A. Correct.

11 Q. Does Daymond John or DF Ventures have access to the bank
12 accounts, records, finances, or credit card of FOFBakers, LLC?

13 A. No.

14 Q. Daymond John's duties and roles in FOFBakers, LLC is
15 limited to being a brand ambassador, on-air television
16 personality for the company, to provide sales' contacts to the
17 company, and to provide marketing, promotions, product
18 development, sales, advertising services and supports of that
19 nature to the company; is that correct?

20 A. Correct.

21 Q. In this limited role, the one I just described, has
22 Daymond John fulfilled his obligations to FOFBakers, LLC?

23 A. Yes, he has.

24 MS. PRIMAVERA: Thank you. We have nothing further on
25 behalf of DF Ventures.

1 THE COURT: Thank you.

2 Mr. Schachtel, you may begin.

3 MR. SCHACHTEL: Thank you, Your Honor.

4 C R O S S - E X A M I N A T I O N

5 BY MR. SCHACHTEL:

6 Q. Mr. Rastelli, when did you first become acquainted with
7 the Baker family?

8 A. Approximately 2015.

9 Q. Okay. And how were you introduced to the Bakers in 2015?

10 A. We were introduced through a broker.

11 Q. Okay. Was the broker an affiliate of DF Ventures or is
12 that a separate entity?

13 A. No, separate.

14 Q. Did DF Ventures connect you to the Baker family?

15 A. No, the Baker family came through the broker.

16 Q. Okay. At what point in time did you discuss entering into
17 a limited liability company or joint venture with the Baker
18 family to distribute their boneless barbecue rib product?

19 A. It was either late '14 or early ' 15.

20 Q. And how did you -- strike that.

21 Prior to entering into that meeting, did you meet with the
22 Baker family?

23 A. Yeah, we met with the Baker family a number of times.

24 Q. And who did you meet with on behalf of the Baker family?

25 A. Primarily with Al Baker and his wife, Sabrina was

1 Q. Well, where do you consider your place of residence,
2 Florida?

3 A. Florida, yes, sir.

4 Q. Fair to say you reside there most of the year?

5 A. Correct.

6 Q. Now, you had mentioned you were in Arizona previously.

7 How did you get from Florida to Arizona?

8 A. When I got from Florida to Arizona in Easter, we flew
9 there. We took two flights. We flew there the weekend before
10 Easter.

11 Q. Okay. Now, the members of FOFBakers Holding Company, LLC
12 are you, Sabrina Baker, and Brittani Baker, correct?

13 A. I don't have that in front of me. I know I am and
14 Brittani is a member, but I don't recall Sabrina being
15 involved.

16 Which FOFBakers are you talking about? There's two.

17 Q. FOFBakers Holding Company, LLC.

18 A. I know that my daughter and I, we share the patent.

19 Q. Okay. And the members of Jabezbakker, LLC are you,
20 Brittani Baker, and Sabrina Baker?

21 A. No. I think it's just me and Brittani, we're the owners
22 of the patent.

23 Q. Now, Mr. Baker, your family has been represented by many
24 lawyers over the years; isn't that correct?

25 A. Yes, sir.

1 team advised you not to travel to Mexico because of safety
2 concerns, correct?

3 A. No, the Secretary of State -- they contacted the Secretary
4 of State. That's who had posted on their website. And the NFL
5 security guy is the one who told me I wouldn't recommend you go
6 there.

7 Q. And if you had traveled to Mexico, you would have done so
8 by plane, correct?

9 A. Correct.

10 Q. And you agree with me that nowhere in this email do you
11 state that you can't travel due to any medical issues you have,
12 correct?

13 A. Correct, I didn't.

14 Q. Now, Mr. Baker, if a judgement was entered against your
15 family for the damages, the monetary damages Rastelli claims it
16 suffered in this lawsuit, your family would not be able to pay
17 it, correct?

18 A. Correct.

19 Q. In fact, Mr. Baker, you previously represented to this
20 Court that you traveling here to New Jersey for the hearing
21 would impose a financial hardship on you, correct?

22 A. Correct.

23 Q. And at that time your wife also represented to the Court
24 that you lost your house and car, correct?

25 A. We have.

1 of the supplier and the co-packer, you reached out to them and
2 you were told in response to your contact that there was no
3 more product, is that what you said?

4 A. Correct.

5 Q. All right. And I note that as of the last six months in
6 particular, it looks like there was really a marked drop-off in
7 the income.

8 Do you have any explanation of why that happened or what
9 the reason for that is over the last six months or so?

10 A. Yeah. According to the Rastellis, they don't have any
11 ribs.

12 Q. But even through the summer, fall of last year, you're
13 still generating some sales here through October, and then
14 starting in September -- or I am sorry, starting in November
15 there is really a serious decline.

16 So again, any insight as to why that is?

17 A. The only thing I can tell you is that according to the
18 Rastellis, they no longer had ribs, and we could see that we
19 were losing customers.

20 Q. Okay. And did you try to contact the Rastellis in the
21 fall of last year when you saw these numbers really take a
22 nosedive?

23 A. Our last conversation with Ray, III was September 26th,
24 and that was a part of the conversation. We got an email from
25 him and a part of the conversation was about the lack of ribs,

1 financial statements. So that's the issue, that those weren't
2 provided.

3 THE COURT: Mr. Schachtel, if you'll just answer my
4 questions, I think I can cut through a lot of this. Please.

5 MR. SCHACHTEL: Sure.

6 THE COURT: Are you going to present any evidence that
7 there was anything inaccurate about those monthly statements?

8 MR. SCHACHTEL: Well, that's the testimony of
9 Ms. Baker, I believe, who's going to testify later.

10 THE COURT: That the monthly statements are
11 inaccurate, she has personal knowledge of that?

12 MR. SCHACHTEL: My understanding is that that's her
13 claim, correct.

14 THE COURT: Okay. Now, there's been all this talk
15 about invoices. You heard Mr. Rastelli's testimony yesterday,
16 and it had come earlier before you got in the case too, that
17 the problem right now, according to Rastelli's side, is that
18 there's no product to sell, correct? There's very little
19 product to sell.

20 MR. SCHACHTEL: Yeah. And that's their fault because
21 they're responsible for product. But yeah, I understand that's
22 their position.

23 THE COURT: All right. So if there's no product in
24 the pipeline, there will be nothing to invoice; is that
25 correct?

1 MR. SCHACHTEL: Your Honor, I'm not a witness here,
2 I'm not a party here. I can't really answer these questions.

3 So, you know, my understanding is that Rastelli is
4 responsible for procuring relationships, for making sure that
5 there was product in the pipeline to sell, and the fact that
6 they haven't done that and they haven't been able to procure a
7 supplier for 18 months is something the Bakers feel is a breach
8 of their obligations under that settlement agreement.

9 THE COURT: Is there going to be evidence presented on
10 behalf of the defendants that the Rastelli testimony that
11 there's little product to sell is inaccurate?

12 MR. SCHACHTEL: Your Honor, the Baker's position is
13 that the Rastellis breached the settlement agreement by failing
14 to employ commercially reasonable efforts to ensure that there
15 was product to sell in stores and that representations that
16 they made regarding their efforts were inaccurate.

17 So the Bakers are prepared to testify to that.
18 Brittani Baker is prepared to testify to that today.

19 THE COURT: That's, of course, not what I asked. I
20 said, are you going to present evidence that the testimony from
21 the Rastellis that there's very little product out there to
22 sell is inaccurate?

23 MR. SCHACHTEL: Your Honor, my response I think speaks
24 for itself. Ms. Baker's testimony is a form of evidence and
25 she's going to testify today to that issue.

1 THE COURT: So she has personal knowledge that there
2 is product available that could have been sold, is that what
3 you're saying?

4 MR. SCHACHTEL: Your Honor, I don't know everything
5 that she's going to say or she's not going to say.

6 What my client's position is, is that the Rastellis
7 did not use commercially reasonable efforts, which is their
8 obligation as part of the settlement agreement, to ensure that
9 there is product to be sold in stores, and the failure to do
10 that is a material violation of the settlement agreement.

11 So Ms. Baker, I believe, is prepared to testify to
12 numerous instances of essentially what is neglect, in her
13 opinion, by the Rastellis to meet their obligations under that
14 agreement. And that is, you know, evidence that we hope the
15 Court will consider as a testimony of a party.

16 THE COURT: Well, it depends on her personal
17 knowledge, of course.

18 So let me make sure I understand something else. Is
19 it your contention that the failure of Rastelli to provide
20 invoices is a material breach of the agreement such that it
21 excuses the Bakers' obligation to perform?

22 MR. SCHACHTEL: That is -- yeah, that is part of the
23 argument.

24 THE COURT: Which part of the agreement does the
25 alleged failure to provide invoices violate?

1 phone call.

2 My dad and I have another LLC that we're partners in, and
3 that's the LLC that assigned this licensing agreement to this
4 company.

5 Q. Okay. And what is the LLC that you're a member in?

6 A. It's FOFBakers as well.

7 Q. Okay. And --

8 A. And Jabezbakker.

9 Q. And what is your interest in that entity?

10 A. My dad and I, in our own LLC, he's 51, I'm 49. Same thing
11 with Jabezbakker, the company that holds the patents, he's 51,
12 I'm 49.

13 Q. And is that entity an owner or a member of the FOFBakers,
14 LLC that's the subject of this dispute?

15 A. Yes.

16 Q. And what percentage of ownership does your entity have in
17 the LLC that's the subject of this dispute?

18 A. 45 percent.

19 Q. And what percentage of voting -- or what percentage --
20 strike that.

21 What percentage of voting interest does your LLC have in
22 the FOFBakers, LLC?

23 A. 51 percent.

24 Q. And were you a party to the 2019 litigation and also the
25 settlement negotiations that resulted in the execution of the

1 amended operating agreement for FOFBakers in September of
2 2019?

3 A. Yes.

4 Q. And to your knowledge, what were the issues that prompted
5 the litigation between the Bakers and Rastelli and DF Ventures
6 in 2019?

7 A. The original issues were accounting issues. Questions
8 about sales, our lack of transparency, us wanting to be more
9 involved with the profits. Questioning, you know, why a
10 \$5.8 million deal didn't produce the profits that they told us
11 to expect.

12 It was a lot of questions about accounting as to why we
13 wound up in settlement and mediation.

14 Q. Okay. You attended -- or strike that.

15 Did you attend the settlement or mediation proceedings
16 that resulted in the execution of the amended operating
17 agreement in September of 2019?

18 A. It was multiple days. I was there the first couple of
19 days, and then I exported the customers out of our website and
20 Rastellis filed a lawsuit against me, and I was advised not to
21 attend the in-person last day of that mediation settlement.

22 Q. Okay. But did you understand the material terms of the
23 settlement agreement that ended the 2019 litigation?

24 A. Honestly, I did not see it that day. They called me and
25 they told me a few things about it. And they said, you know,

1 it's getting late, we've been here for days, this is the best
2 we can do, do we have your approval to move forward?

3 I wasn't clear on all of the terms, but I guess now I am.

4 Q. As you're here today, do you understand what the terms,
5 the material terms of the 2019 settlement agreement were
6 between your entity and the Rastellis and the DF Ventures?

7 A. Yes.

8 Q. What is your understanding as to the obligations of the
9 Rastellis under the 2019 settlement and operating agreement?

10 A. Their obligations basically stayed the same as they were
11 originally, to make, source, produce, distribute, use their
12 best commercially reasonable methods to push this product out
13 there, distribute this product, source this product, using all
14 of their resources and their connections to distribute this
15 product.

16 Q. All right. And what was your understanding as to the
17 obligations of DF Ventures, Daymond John, and any other parties
18 associated with those entities as a result of the amended
19 operating agreement and settlement agreement?

20 A. Daymond John's responsibilities were going to stay the
21 same as what they were after we originally went on Shark Tank,
22 to be the brand ambassador and help us market this product to
23 the masses; to, you know, use his social media presence and his
24 name to help us grow this business.

25 Q. Okay. And what was your understanding as to the

1 speak about and share with what they're terming the nightmare
2 of working with the plaintiffs, both Daymond John and the
3 Rastellis.

4 THE COURT: Well, here's what you're going to do.
5 Ms. Baker is here testifying. When your turn comes, you may
6 ask about that, okay. We'll get to the bottom of it.

7 MS. KUCINE: Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 All right. Mr. Schachtel, continue with your direct.
10 Ms. Baker, you're still under oath.

11 THE WITNESS: Yes, Your Honor.

12 C O N T I N U E D D I R E C T E X A M I N A T I O N

13 BY MR. SCHACHTEL:

14 Q. Brittani, just to touch on this issue that's just been
15 raised, are you familiar with what was just alleged, that
16 there's been any change to the website?

17 A. I'm not familiar. I have not been on social media, I have
18 not made any updates, I have not made any posts, I have not
19 done anything since the Judge ordered me to not.

20 Q. Have you solicited email addresses for the purpose of
21 disseminating a newsletter or information of any kind to give
22 people access to the website?

23 A. Not at all. I haven't made any changes since I took our
24 domain down. I have not made any changes. There's a
25 subscription thing on there I think from when it was my

1 website, but I haven't added anything new.

2 Q. Okay. Do you have any insight as to why DF Ventures
3 believes that there has been a change to the website in the
4 last several days?

5 A. No. They just want to make it look like I violated
6 something, but I have been following the orders and haven't
7 changed anything. I haven't touched anything at all.

8 Q. Okay. So fair enough. I'm going to move back to where we
9 left off a couple days ago.

10 If you recall, we were speaking about -- we reviewed the
11 amended operating agreement and the settlement agreement and
12 the accompanying supplement, which was a handwritten additional
13 term sheet that were agreed and entered into in September of
14 2019 to resolve the litigation between you and the other
15 parties.

16 So I want to just ask you if you can refresh, reorient us
17 as to what your understanding was as to the Rastelli's
18 obligations under that 2019 amended operating agreement and
19 settlement?

20 A. What their duties were?

21 Q. What were their obligations to the business and to the
22 Baker entities with respect to all things related to the
23 products that were the subject of your LLC?

24 MR. DAHAN: Your Honor, I'm just going to -- Your
25 Honor, I'm going to object. This line of questioning has

1 we've asked for the direct sales reports from the customers.
2 We have to -- it's clear that the trust in this entire
3 partnership is gone.

4 But we're forced to trust Rastelli's sales reports that
5 they send us. We don't trust those. We have no way to verify
6 them. We --

7 Q. What specific misrepresentations have been made
8 financially after you signed the 2019 settlement agreement, if
9 any?

10 MR. DAHAN: Objection, Your Honor. Leading the
11 witness.

12 MR. SCHACHTEL: I don't believe it's leading.

13 THE COURT: It's overruled. He asked what
14 representations or misrepresentations have been made.

15 THE WITNESS: The sales, definitely the sales, the
16 payments to Daymond John.

17 Every time we ask about what Daymond Johns got paid,
18 we get a different number. Larry Fox here has thrown out a
19 couple of numbers.

20 It's always been about the accounting, it's always
21 been about the sales. It's the same thing.

22 BY MR. SCHACHTEL:

23 Q. Brittani, what specific documentary evidence or statements
24 are you relying on when you say that there have been
25 misrepresentations about the sales?

1 A. The gross receipts because we can't get them directly from
2 the customers.

3 So I mean, I don't know. That's what I'm trying to figure
4 out. We're forced to believe whatever they send us. That's
5 not what we want. We've been asking for direct reports to be
6 included in all information.

7 So what we're saying is we don't believe that it's fair
8 business dealings taking place because we're left out of all
9 the important conversations pertaining to everything.

10 Q. All right. Brittani, with respect to your knowledge and
11 your allegation that there have been discrepancies in the
12 amount of payments that have been paid to Daymond John, what
13 is the source of your knowledge on those claims?

14 A. The source to our knowledge is that they have a
15 confidential payment arrangement. We don't know.

16 That's the problem. The problem is that we don't
17 have access to this information. That's what's causing
18 everything.

19 Q. All right. Prior to being served with this lawsuit, did
20 you ever -- were you ever notified that the other members
21 of the LLC were claiming that your father had made
22 unauthorized use of the credit card that was provided to him by
23 Rastellis?

24 A. No, not at all.

25 Q. So to your knowledge, was there ever any communication

1 were trying to have the videos removed. I put this up before
2 the order. I'm not going to violate the Judge's order. That's
3 pure disrespect. I'm not going to do that.

4 This was up before his order. So --

5 MS. COLWIN: Your Honor --

6 THE WITNESS: -- if I was going to violate the order,
7 I would --

8 THE COURT: Hold on. Hold on. You've got to stop
9 arguing. You can't talk over each other.

10 Let's ask a question. Ms. Baker, you can then answer
11 the question. All right?

12 THE WITNESS: Sure.

13 THE COURT: Please ask your question.

14 BY MS. COLWIN:

15 Q. Ms. Baker, you agree with me, if this subscription button
16 existed after June 16th, there would not be dozens upon dozens
17 upon dozens of comments on your pages looking for an update;
18 isn't that right?

19 A. They want an update because I haven't posted. They were
20 going to want updates anyway.

21 I put that there before the Judge's order in case social
22 media took my pages down. I didn't put this up there because
23 people were requesting it. I put that up because I was
24 forward-thinking, if social media takes my post down, I still
25 want a way to be able to share my story.

1 That's why I --

2 MS. COLWIN: Your Honor --

3 THE WITNESS: Not for any other reason. I mean,
4 that's honest truth. I did that before the order.

5 BY MS. COLWIN:

6 Q. And I just want to make sure that the honest truth,
7 according to your testimony, is that you have not done and
8 changed any of your platforms; is that right?

9 A. My lawyer told me to take out something in the bio. He
10 told me to take out the negative comment that I said Rastellis
11 are trying to steal my business. Under his advice, I took that
12 out and put "co-inventor of the patented boneless ribs."

13 I didn't say anything negative. He said remove that bio,
14 that's what I did.

15 Q. So when you testified during your direct that you had not
16 touched any of your social media platforms, you lied; isn't
17 that right?

18 A. That's not a lie. That's not -- I didn't respond to
19 anybody. I'm not posting.

20 That's what the order said. The order didn't say you
21 can't open social media. The order said you can't post about
22 this case, you can't comment. That's what I have not been
23 doing.

24 It's a habit to scroll on social media, log in. I haven't
25 been talking to people, telling them about this case. I